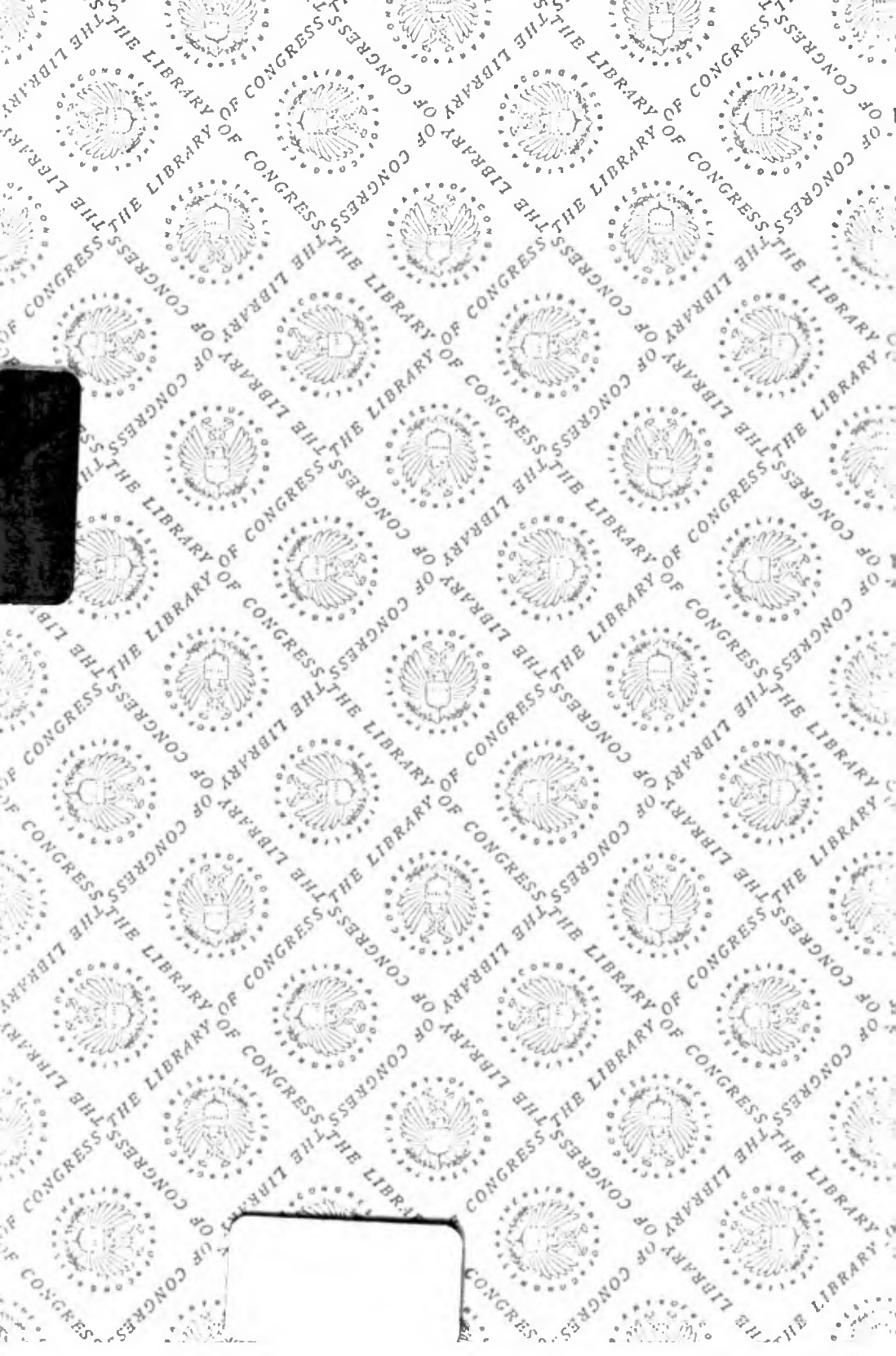

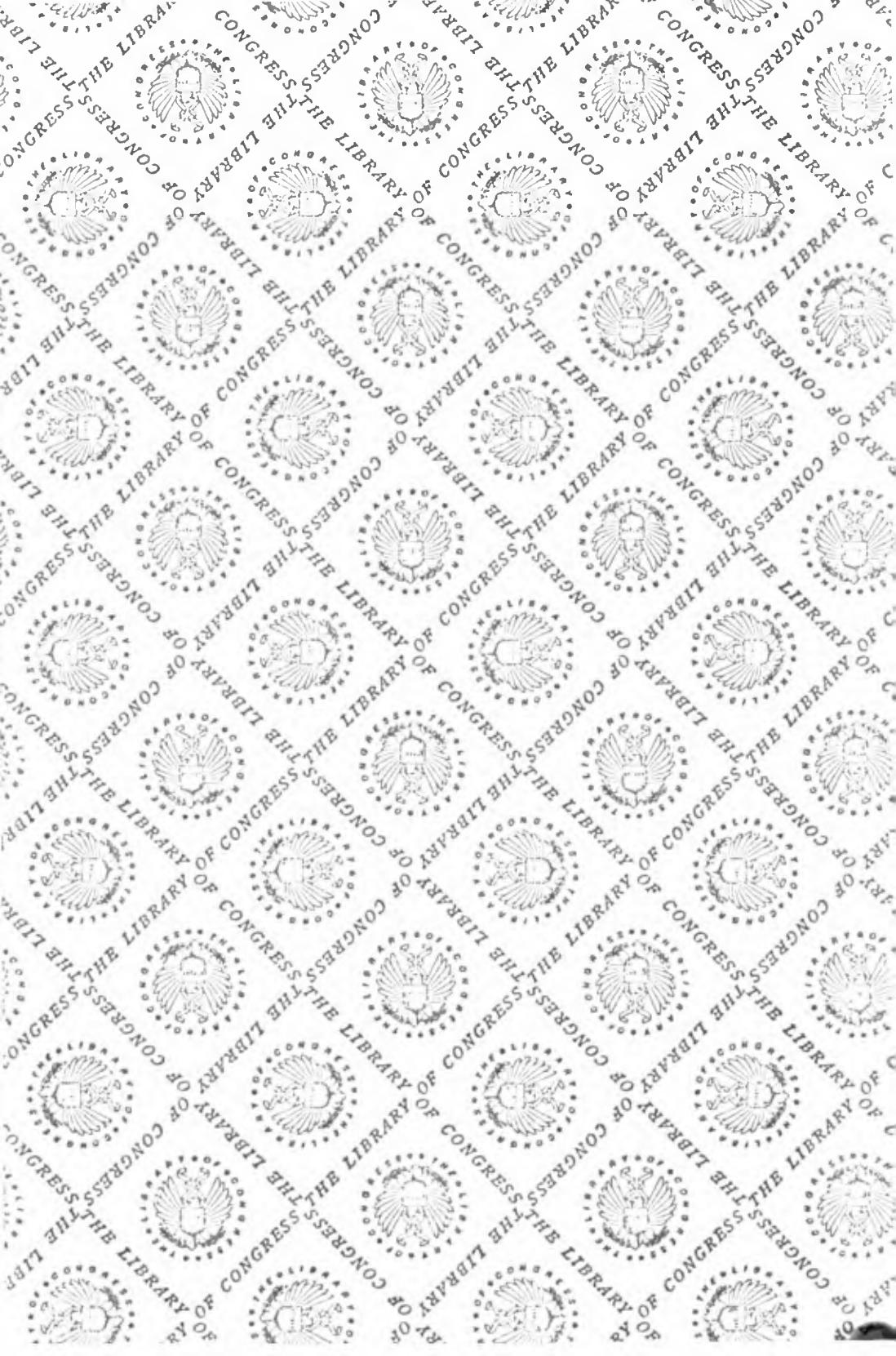
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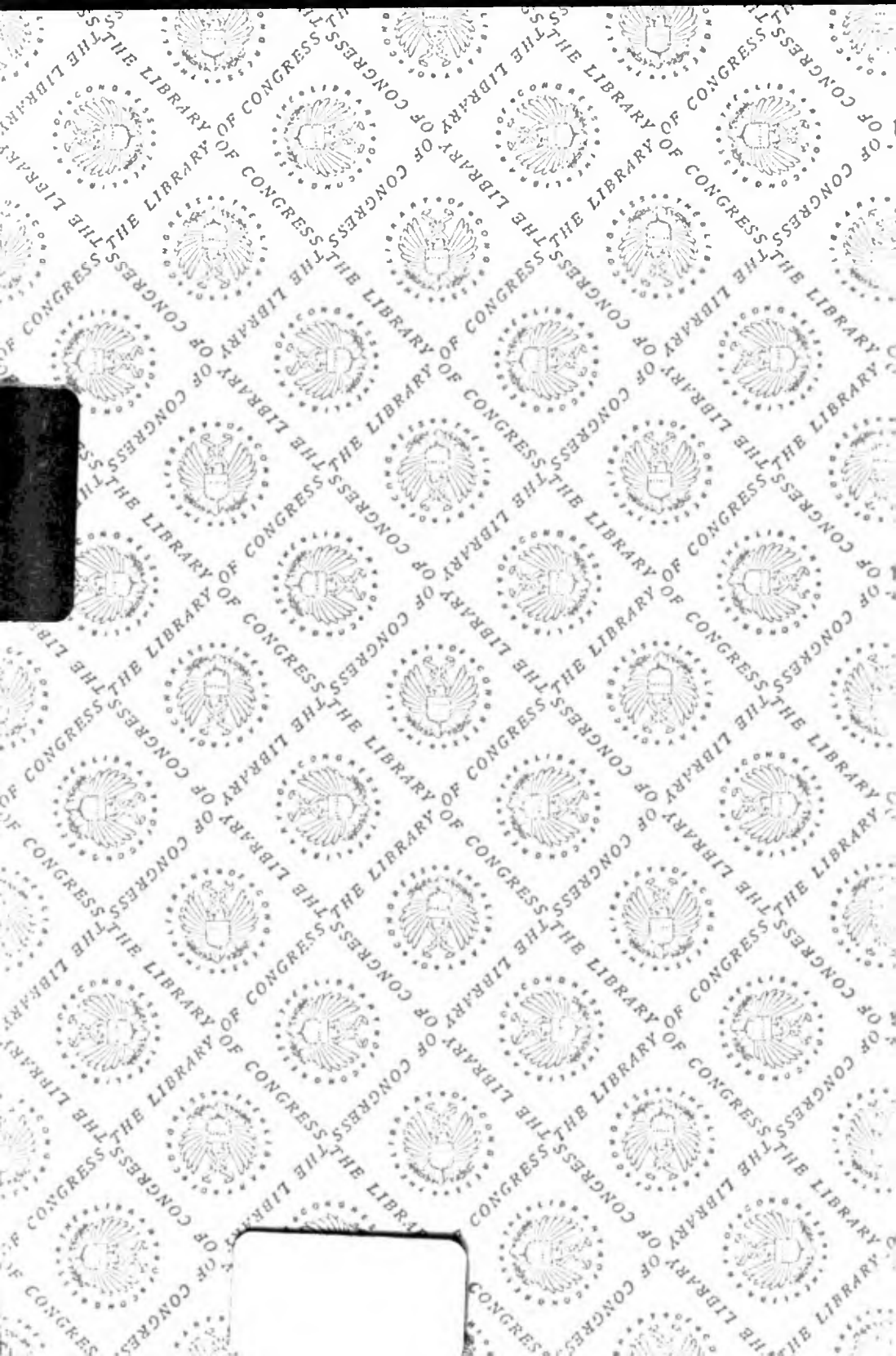
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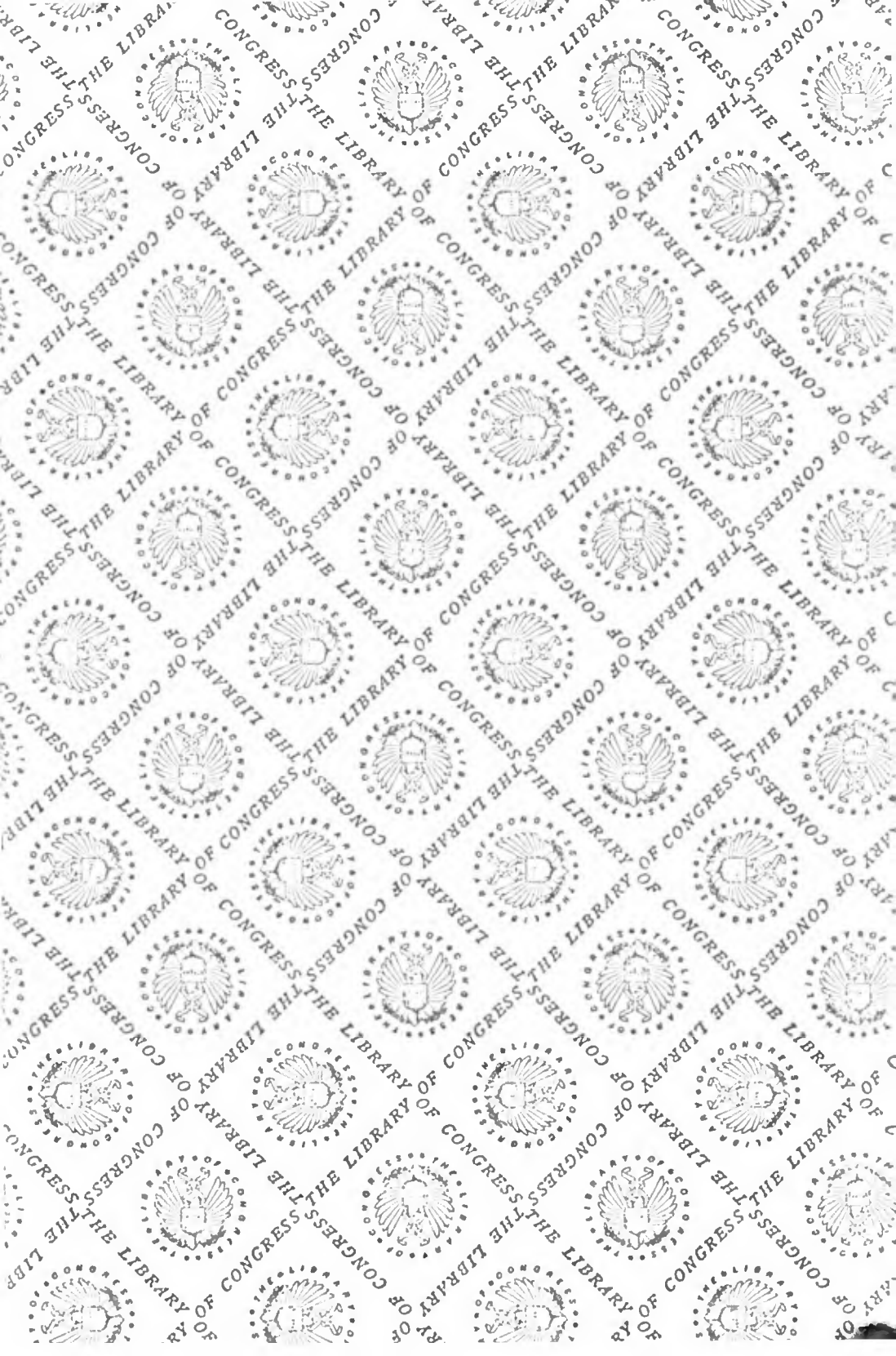
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APPROPRIATION AUTHORIZATION OF OFFICE OF GOVERNMENT ETHICS

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

APPROPRIATION AUTHORIZATION OF OFFICE OF GOVERNMENT ETHICS

MARCH 16, 1983

Serial No. 4

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

19-418 O WASHINGTON : 1983

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APPROPRIATION AUTHORIZATION OF OFFICE OF GOVERNMENT ETHICS

WEDNESDAY, MARCH 16, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room B-352 of the Rayburn House Office Building, Hon. Sam B. Hall, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Hall, Frank, and Kindness.

Staff present: William P. Shattuck, counsel; Janet S. Potts, assistant counsel; Charles E. Kern II, associate counsel; and Florence McGrady.

Mr. HALL. The Subcommittee on Adminstrative Law and Governmental Relations will come to order.

I apologize for being late, but I had my other meeting in the District of Columbia, and this one seems like it's in Virginia, when you start trying to get to it.

We're glad to have this morning three witnesses, David Scott, Acting Director of the Office of Government Ethics; Rosslyn Kleeman, Assistant Director, Federal Personnel and Compensation Division, General Accounting Office; Ann McBride, vice president of program operations, Common Cause.

We will lead off with Mr. Scott. Mr. Scott, we're glad to have you, and you may proceed as you see fit.

TESTIMONY OF DAVID SCOTT, ACTING DIRECTOR, OFFICE OF GOVERNMENT ETHICS, ACCOMPANIED BY JACK COVALESKI, HEAD OF THE MONITORING AND COMPLIANCE STAFF AND GARY DAVIS, SENIOR STAFF ATTORNEY

Mr. SCOTT. Thank you, sir. Good morning, Mr. Chairman and members of the subcommittee.

Joining me at the table here this morning are Mr. Jack Covaleski, the head of our monitoring and compliance staff, on my right, and Mr. Gary Davis, a senior staff attorney, on my left. They are here to help answer any questions that you may have.

I appreciate the invitation to appear before the subcommittee to present the views of the Office of Government Ethics, often called OGE, on House bill No. 1650, legislation to extend the appropriations of this office for a period of 5 years beyond its present expiration date of September 30, 1983. In response to your request, I

prepared and submitted a written statement for the record. In order to permit time for any questions you may have, I will summarize that statement here today.

[The complete statement follows:]

FOR RELEASE ON DELIVERY
Expected at 9:30 A.M. EST
March 16, 1983

STATEMENT OF

DAVID R. SCOTT
ACTING DIRECTOR
OFFICE OF GOVERNMENT ETHICS

BEFORE
THE SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS
OF
THE HOUSE COMMITTEE ON THE JUDICIARY

ON

H.R. 1650
TO EXTEND THE AUTHORIZATION OF APPROPRIATIONS FOR THE
OFFICE OF GOVERNMENT ETHICS FOR FIVE YEARS

MARCH 16, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the invitation to appear before this Subcommittee to present the views of the Office of Government Ethics (OGE) on House Bill 1650, legislation to extend the appropriations authority of this Office for a period of five years beyond its present expiration date of September 30, 1983. In response to your request, I will also present several recommendations to amend Titles II, IV, and V of the Ethics in Government Act of 1978, as amended, (the Act) concerning the financial disclosure provisions, the structure of the Office of Government Ethics, and the post employment prohibitions respectively.

FUNCTIONS OF OGE

Title IV of the Ethics in Government Act of 1978 established OGE to provide overall direction of Executive Branch policies related to preventing conflicts of interest. In particular, the work of the Office involves Executive Branch personnel financial disclosure requirements; "revolving door" or post employment conflicts of interest; all other criminal conflict of interest statutes; and Executive Branch employee responsibilities and standards of conduct.

The Act gave OGE an important role in the Presidential appointment process. In regard to every Presidential nominee requiring Senate confirmation, the Director of OGE must sign the nominee's public financial disclosure report and deliver it to the Chairman of the Senate committee of confirmation, together with an opinion letter affirming the nominee's compliance with all applicable conflict of interest laws and regulations. The recent practice of the Senate committees is to regard receipt of the OGE opinion letter as a condition precedent to completion of a confirmation hearing.

Primary responsibility for administration of agency ethics programs rests with the head of each agency, who in turn must appoint a designated agency ethics official (DAEO). This agency ethics official's responsibilities are to administer the financial disclosure provisions of the Act, to manage the agency's ethics program, and to serve as a liaison to OGE. OGE serves as a central coordinating office providing leadership and

consistent guidance on conflict of interest issues to each designated agency ethics official.

The responsibilities of OGE are divided between the Chief Counsel and his staff of five attorneys, and the Deputy Director who oversees the Monitoring and Compliance Division staff of nine management analysts. Including support staff, OGE has a current authorized strength of 23.5 positions and is operating presently with a staff of 21 persons.

The Legal staff develops regulations and policies concerning various Executive Branch ethics matters. The Office has issued regulations implementing Titles II, IV, and V of the Act concerning the Executive personnel financial disclosure provisions, the operation of agency ethics programs, and the post employment conflicts of interest prohibitions respectively. We intend to seek a delegation of authority from the President to revise regulations under Executive Order 11222 concerning the confidential financial disclosure systems for Federal employees in positions below GS-16.

The Legal staff also renders advisory opinions on all kinds of ethics issues and responds to approximately 380 telephone inquiries per month, many of which are from the White House Counsel's Office or from private companies or firms. The attorneys review the public financial disclosure reports of Presidential nominees prior to their Senate confirmation hearings and consult with the appointees and/or the agency ethics officials as necessary to bring the appointees' financial interests into compliance with applicable Federal conflict of interest laws and regulations.

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So that the agencies and the public may know how OGE is interpreting the various Federal conflict of interest and standards of conduct provisions, the most important of the OGE attorneys' opinions are circulated in digest form (with information identifying the parties deleted) to the agencies and to other interested persons and companies.

The Monitoring and Compliance staff of OGE conducts reviews of the adequacy and effectiveness of Federal agency ethics programs, including the public and confidential financial disclosure systems, standards of conduct regulations, and ethics training and counseling programs. In fiscal year 1982, the Compliance staff conducted reviews in 20 departments and agencies and in 115 regional offices and military installations in 14 metropolitan areas. The Compliance staff conducts training programs for agency ethics officials, employees, and other interested groups and has recently initiated a training program for regional ethics officials to be given in all ten standard Federal regions. The Compliance staff also reviews the annual and termination reports of approximately 900 Presidential appointees each year, and works closely with agency ethics officials to insure that such reports are accurate and complete.

In calendar years 1980 and 1981, the Office of Government Ethics sponsored two-day training conferences for agency ethics personnel with attendance on each occasion exceeding two hundred participants. In calendar year 1982, a one-day conference was held. Materials prepared at each of these conferences were made available to the agencies for continuing education purposes.

1981 PRESIDENTIAL TRANSITION

In tha wake of the 1980 election, with tha advent of a changa in administrations, OGE was faced with the first Presidential transition under the Act. The test of the Office was whether it could review and process the public financial disclosure reports of Presidential nominees and render opinions to the Senate confirmation committees at the pace set by the White House nomination process. It immediately became clear that many legal and procedural issues had to be faced.

While OGE's Title II regulations issued in 1980 set forth expedited procedures in the case of Presidential nominees subject to Senate confirmation, neither the Act nor its legislative history adequately addressed how OGE should function during the transition period. For axample, the Act presupposes that the President send nominations to the Senata to trigger tha procedures for Executive Branch review and public release of financial disclosure reports. During the transition period, however, the President-Elect has no power to make nominations. Nonetheless, the conflict of interest review process had to go forward if the new Cabinet and other key officials were to be ready for confirmation when the President took office.

Following the election, OGE immediately developed lines of communication with the Presidential transition team and, subsequently, the White House Personnel Office and the Counsel to the President. Key staff members of each Senate confirmation committee were contacted to discuss operating procedures, and almost daily contacts were

maintained throughout the 1981 transition year. An OGE attorney was assigned to work with the transition team to smooth the process and to assist in any and all matters concerning the Act. A computer system was developed for OGE to keep track of the financial disclosure reports from approximately 800 appointees throughout the confirmation process and to be able to give a daily status report to the White House. A procedure was devised whereby the President-Elect's notice of "intent to nominate" was treated as tantamount to nomination for Executive Branch review purposes, and receipt of an intended candidate's financial report was deemed to be receipt of a form for purposes of public disclosure.

The procedures improvised by OGE worked well, although much of what was done was without statutory guidelines. The Ethics in Government Act is a new statute, and it left a number of questions unanswered. OGE's handling of the 1981 transition is but one example of administrative solutions being found for statutory problems.

During calendar year 1981, OGE received financial disclosure reports from 615 nominees. On the average, OGE sent the reviewed report with an opinion letter to the Senate confirmation committee within four days of the appointee's nomination by the President. All but fifteen reports were sent to the Senate prior to the first confirmation hearing by the Senate committee. Most of these fifteen reports were not received by OGE until after the first hearing had occurred. The financial interests of 354 of the 615 nominees required that actions be taken to shield them from conflicts of interests in their Government positions. The majority (70%) of these actions included resignations from prior positions or disqualification from taking actions in their Government positions

concerning companies in which they held financial interests.

The transition continued into 1982 with the reports of 328 additional nominees being received. While that total will undoubtedly decrease in 1983, we already can foresee that a substantial number of Presidential appointees' public financial disclosure forms will be reviewed by our Office this year.

Overall, despite initial fears and media reports that the Ethics in Government Act of 1978 would be a bottieneck in staffing the new Administration, this did not occur. Since 1981, over 1000 Presidential appointees have come into the Executive Branch of Government with almost every conceivable type of financial interest. Agreements reached with appointees to protect them and the Government against conflicts of interest have withstood the scrutiny of the Senate, the White House, public interest groups, the GAO, and the news media. We believe that the Office fully met the test provided by the transition in a highly professional and timely manner. The protections set in place for the nominee, the public, and the Government heightened the sense of integrity and openness in the Federal Government.

OGE'S RELATIONSHIP WITH OPM

Title IV of the Ethics Act established OGE as a statutory agency in the Office of Personnel Management. Section 402(a) specifies that OGE shall operate "under the general supervision" of OPM.

In general, this broad directive of section 402(a) of the Act has been carried out by OGE acting independently of OPM in its dealings with other federal agencies on issues involving substantive conflicts of interest (18 U.S.C. §§ 202-209) and standards of conduct (E.O. 11222 and 5 C.F.R. Part 735). On the other hand, OPM has at all times exercised administrative control over the budgetary, personnel, and logistical operations of OGE. For example, under the Act, OGE has the responsibility of drafting regulations to implement the Act's directives but must obtain OPM's approval of these regulations before issuing them in OPM's name. In practice, OPM's part in the whole process has been nominal, and it has accepted virtually all of the substantive recommendations that OGE has made on these regulations. Similarly, OGE has fulfilled its statutory responsibilities to oversee the public financial reporting program imposed by Title II of the Act and to render advisory opinions on various conflict of interest and ethical issues independently of OPM (as the Ethics Act requires).

The Director of OPM, Donald J. Devine, best explained this operational relationship when he submitted written testimony to an Oversight Hearing of the Subcommittee on Civil Service of the Committee on Post Office and Civil Service of the House of Representatives on September 22, 1981. The Subcommittee, noting that the new OPM organizational chart showed the Director of OGE reporting to the Deputy Director of OPM rather than to the Director, had asked why OGE was being downgraded. Director Devine responded:

> Simply stated, I have not downgraded the Office of Government Ethics (OGE). In implementing my management philosophy, I reduced the number of OPM organizations reporting directly to me. OGE was established as a special unit within OPM by the Ethics in

Government Act of 1978. That Office and its program, due to its effective leadership, runs with substantial independence and is very successful. Presently, the major point of interaction between the Director, OGE (a Presidential Appointee, subject to the advice and consent of the Senate), and my immediate office is in the area of assuring OGE prompt and adequate support from OPM's administrative offices (e.g., Personnel, Budget, Management) which, under the new organizational alignment, also report to the Deputy Director.

As Director Devine pointed out, OGE has an "advice and consent" Presidential appointee to carry out its statutorily defined programs and responsibilities. Consequently, OPM has seen its major role vis-a-vis OGE to be that of providing it with adequate support from OPM's administrative offices. OGE in fact is the only entity within OPM which has been statutorily created and therefore has distinct, Congressionally-mandated goals and duties which are not part of OPM's mandates under the Civil Service Reform Act of 1978.

BUDGET AND STAFF LEVELS

The budget and staff levels for OGE for fiscal years 1980 through 1984 are as follow:

	BUDGET LEVEL	STAFF LEVEL
FY 1980	$637,400	16
FY 1981	938,500	26
FY 1982	951,300	23.4
FY 1983	1,016,000	23.5
FY 1984(requested)	1,093,000	25.5

The actual staff level for FY 1981 was higher than that recommended by OPM for that fiscal year, since OPM at OGE's request subsequently authorized OGE to hire new employees in 1981 at the level projected for FY 1982. This was done in view of OGE's unique and enhanced responsibilities for administering the Act during the Presidential transition period.

It should be pointed out, however, that OGE received largely what it needed because of special pleas and agreements. Both Director Devine and Deputy Director Loretta Cornelius have been supportive of OGE and its mission. They have been responsive to direct appeals from the Office for necessary funds and additional staff, and thus far the Office has received adequate resources.

STRUCTURAL MODIFICATIONS

As noted, personnel and individual relationships with OPM have been positive and harmonious. OGE has been able to perform its statutory functions effectively and its independence has not been impinged upon by OPM's nominal control. OPM has been supportive of this Office. Therefore, structural and organizational changes are not necessary to assure independence and viability of the OGE.

A. Resources

As a part of OPM, OGE is subject to its management policy decisions; this can have a massive, unintended effect on our small Office. For example, when President Reagan directed a personnel freeze upon taking office in 1981, OGE was swept into it because it was treated like any other OPM entity. Had OGE been considered a separate agency for hiring purposes, it would have escaped an unnecessary hardship, because the freeze directive itself exempted agencies with less than 100 employees. Similarly when OPM reduced its budget in 1982 by means of reductions-in-force ("RIFs"), OGE first had to argue to OPM that "riffing" its tiny staff would be disastrous to its mission and was budgetarily unnecessary. Having been successful in that argument, OGE still had to absorb the resultant "bumps" from other personnel in OPM who were "riffed", and thereby OGE suffered dislocating personnel losses anyway.

Because of OGE's small staff and budget, a small ripple in OPM's budget and staffing plans becomes a tidal wave when it impacts on OGE. Accordingly, administrative changes are planned which would give OGE a separate line item within OPM's budget.This would ensure Congressionally-mandated review and funding for OGE, separating the Office from fluctuation in OPM's budget process.

B. OGE Director's Term of Office

The Act requires the Director to review the financial reports of Executive Branch appointees and to report his opinion on their conflicts, if any, to the Senate Committee

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considering the nomination. The Director must be responsive to both the President and the Senate and yet keep his independence from both. To be effective, the Director must make difficult, delicate decisions in an independent, apolitical manner. He should have the confidence of the President but also should feel free to act apart from the President's wishes.

Nevertheless, as stated earlier, the Office has functioned effectively and without political interference in both Republican and Democratic administrations under the existing appointment system. There is no compelling reason to change the terms of appointment and removal of the Director.

C. OGE Sunset Date

We support the five year extension of appropriations authorization provided for in H.R. 1650. The need for a centralized government ethics office has long been recognized. A 1960 report of the Association of the Bar of the City of New York recommended the establishment of such an office, noting that the administrative process could provide a viable alternative to "the broad axe of criminal prohibition" and could, in addition, reduce the risks the conflict of interest laws were intended to meet. In the years thereafter, various bills to create an ethics office were introduced. The GAO recommended the creation of such an office in a 1977 report. In remarks made at OGE's 1982 annual conference, Roswell Perkins, a major author of the New York Bar Study, deemed the creation of the Office of Government Ethics "by far the most important and positive accomplishment of the 1978 Act," in view of the fact that "it took nearly two decades . . . to get the job done, after strong and clear recommendations had been made to that effect."

The five year reauthorization will provide the appropriate means to review the activities of OGE while maintaining sufficient independence for effective performance of Office functions.

PROPOSED AMENDMENTS

Chairman Rodino's letter inviting me to testify here today asked that I include in my testimony any recommendations I might have for amending the Ethics in Government Act. I will not discuss in detail any of my proposals but rather will briefly mention a few areas where improvements are needed. These proposals are not intended to be all inclusive but rather are aimed at those portions of the law which I believe are most in need of attention.

A. Financial Disclosure

1. Eliminate public financial disclosure by the career civil service.

The categories of government employees who must file public financial disclosure reports are both under-inclusive and over-inclusive, given the underlying purposes of the Act. All government employees classified at GS-16 or above and all military officers at grade O-7 and above must file publicly, regardless of their official responsibilities. With certain exceptions, career employees classified below GS-16 do not have to file public

financial disclosure statements, again regardless of the nature of their responsibilities. Under existing law, a GS-16 personnel officer who never deals with the public is required to file publicly, while a GS-12 procurement officer who influences awards of multi-million dollar government contracts is not.

The ideal solution to this problem of over- and under-inclusiveness would be to identify specifically those positions in the Executive Branch which actually have a significant potential for conflicts of interest. However, the identification of sensitive positions throughout the Executive Branch would be an extremely difficult and time-consuming task. Therefore, I propose that the Act be amended simply to eliminate public disclosure by employees in the career civil and career military services. Requiring careerists to file confidential rather than public statements retains the simplicity of existing law but reaches a better balance between the privacy interests of government employees and the public's interest in preventing conflicts of interest.

There is legitimate debate within the Ethics community as to the need for and efficacy of public versus confidential financial statements, and this area should be considered by the Congress.

2. Clarify and simplify the blind trust rules.

Another area of the Act in which a number of problems have arisen is the portion dealing with blind trusts. The Act as written does not require anyone to have a blind trust.

Rather, the blind trust provisions are provided as tools to help government officials avoid potential conflicts of interest. I endorse the concept of blind trusts as one of the useful alternatives to remedy conflict of interest problems but feel strongly that some recurring problems under the Act should be rectified.

(a) Qualified diversified trusts should be available to all Executive Branch employees.

The Act presently recognizes two types of blind trusts: the qualified blind trust and the qualified diversified trust. The qualified diversified trust gives broader protection from conflict problems, because the assets placed into such a trust are deemed to be immediately "unknown" to the grantor-government official. The qualified blind trust only provides for "gradual blindness", because the original assets placed in the trust are not deemed to be "unknown" until disposed of or reduced to a value under $1,000.

For no articulated reason, the Act makes qualified blind trusts available to all Executive Branch officials, but limits the availability of qualified diversified trusts to Senate confirmed Presidential appointees in the Executive Branch. I believe this is inequitable. My recommendation is that qualified diversified trusts be made available throughout the Executive Branch.

(b) Provision should be made for blinding of "old family trusts."

An "old family trust" is a trust established prior to the effective date of the Act by an ancestor for the benefit of his descendants, one of whom is now a government official,

and which has holdings of which the official is aware. Under the Act as it now exists, a typical "old family trust", because it was not originally intended to establish blindness, cannot be later blinded by amendments to the trust instrument. Because the trust cannot be blinded, the government official must find out what the trust holds in order to report the trust assets. He is thereby limited in what official actions he may take under the criminal conflict of interest provision which makes it unlawful knowingly to take official action in a matter in which one has a financial interest. The non-government beneficiaries of the "old family trust" also suffer, because their trust holdings must be made public in the government official's financial disclosure report. I recommend that the Act be amended to allow the interested parties to an "old family trust" to agree, if possible, to blind the trust as to the government official who is a beneficiary.

(c) The concept of "excepted trust" should be clarified.

A third problem that has arisen in the trust area involves the concept of "excepted trust." An excepted trust is defined by the Act as one which was not created by the government official, his spouse, or any dependent child and the holdings or sources of income of which the official, his spouse, and any dependent child have "no knowledge." There are many benefits of having an excepted trust under the Act, and, not surprisingly, OGE has dealt with many cases involving government officials who claimed that trusts of which they were beneficiaries fell into the "excepted" category. Because the Act itself and the legislative history say virtually nothing about what was intended, OGE has had no guidelines by which to answer the difficult definitional questions which have arisen. Does a government official who knows that a trust of which he is a beneficiary holds stock of

three domestic oil companies, but does not know precisely which ones, have "no knowledge" within the meaning of the Act? What about the official who knew three years ago what the trust held, but does not know what the trust owns now? Further statutory guidance is needed so that the excepted trust provisions can be administered in accordance with legislative intent.

B. Post Employment

The law governing post employment conflicts of interest has long been a subject of much debate. Title V of the Ethics in Government Act of 1978 revised the "revolving door" rules found in Section 207 of title 18, United States Code, and Section 207 was amended again in June of 1979. Unfortunateiy, some problems with the law remain, and I will mention those which are of particular concern to me.

1. Clarify 18 U.S.C. § 207(g)

The first has nothing actually to do with post employment per se. The provisions of 18 U.S.C. § 207(g) restrict the activities of partners of present day government employees. These restrictions were inappropriately placed in Section 207, when it was originally enacted in 1962, and they lie hidden there among a variety of post employment provisions. The result of the misplacement is that the restrictions on partners of present government employees are little known and often misunderstood. This kind of confusion is particulary undesirable in the case of a criminal statute, which Section 207 is. The provisions of Section 207(g) should be taken out of the post employment section and placed elsewhere in the Code.

Section 207(g) provides that "partners" of Executive Branch employees are prohibited from certain activities, but the statute does not define the term "partner". That term encompasses a broad range of contractual agreements, and it is not apparent from the legislative history that Congress intended this provision to apply in all cases. For example, I am doubtful that the provisions of Section 207(g) were intended to apply to the activities of other investors in a limited partnership in which a government official has a minor, passive investment interest, such as a publicly offered limited partnership investing in real estate. However, OGE has not been free to narrow the application of the statute in the absence of some expression of legislative intent. My recommendation is that Congress take another look at this area and impose appropriate limitations on the reach of Section 207(g).

2. Abolish designation of senior employees and designation of separate non-statutory components.

Two of the restrictions applicable to former government employees - the one year "cooling off" period established by 18 U.S.C. § 207(c) and the two-year ban in assisting on representing set forth in Section 207(b)(ii) - are only applicable to certain high level officials. These officials are listed in Section 207(d)(1) and include "senior employees" designated pursuant to Section 207(d)(1)(C) by the Office of Government Ethics in consultation with the department or agency concerned. Those eligible positions involving significant decision making or supervisory responsibility are to be designated. Section 207(d)(1)(C) also provides that, as to designated senior employees, the Director of the Office of Government Ethics may limit the restrictions of Section 207(c) to permit a

former government official who served in a separate agency or bureau within a department or agency to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction.

Experience has shown that the designation process is both unnecessary and unworkable. The senior employees who are eligible for designation under Subsection (d)(1)(C) are not ordinarily high enough in an agency's hierarchy to have the kind of influence that the ban of Section 207(c) was aimed against. In addition, OGE and the individual agencies have found the designation process extremely difficult to administer. The designation process requires a current position description of each eligible employee along with an explanation of where he or she fits into the organization's chain of command. This has proven to be a virtual impossibility in the light of frequent agency reorganizations, changes in administration, reductions in force, and other changes in personnel. The separate, non-statutory agency determinations are also too cumbersome to be administered effectively by OGE. The Act provides few meaningful standards to use in making the discretionary determinations required by Section 207(d)(1)(C), with the inevitable result that decisions are arbitrary and based on inadequate factual records. The section should be repealed.

In summary, Mr. Chairman, I want to express my support for legislation re-authorizing the Office of Government Ethics. While there are some problems with the Ethics in Government Act as written, these problems can be solved. However, there is no question but that OGE has successfully fulfilled its important obligation to provide overall direction of Executive Branch policies regarding conflicts of interest.

I will be happy to answer any questions you may have.

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Mr. SCOTT. Title IV of the Ethics in Government Act of 1978 established the Office of Government Ethics to provide overall direction of executive branch policies related to preventing conflicts of interest. In particular, the work of the Office involves executive branch personnel financial disclosure requirements, revolving door or postemployment conflict of interest; all other criminal conflict-of-interest statutes; and executive branch employee responsibilities and standards of conduct.

The act gave OGE an important role in the Presidential appointment process. In regard to every Presidential nominee requiring Senate confirmation, the Director of OGE must sign the nominee's public financial disclosure report and deliver it to the chairman of the Senate committee of confirmation, together with an opinion letter affirming the nominee's compliance with all applicable conflict-of-interest laws and regulations. The recent practice of the Senate committees is to regard receipt of the OGE opinion letter as a condition precedent to completion of a confirmation hearing.

The responsibilities of OGE are divided between the Chief Counsel and his staff of five attorneys, and the Deputy Director who oversees the Monitoring and Compliance Division staff of nine management analysts. Including support staff, OGE has a current authorized strength of 23.5 positions and is operating presently with a staff of 21 persons.

The legal staff develops regulations and policies concerning various executive branch ethics matters; renders advisory opinions on all kinds of ethics issues; and responds to approximately 380 telephone inquiries per month, many of which are from the White House Counsel's Office or from private companies or firms. The attorneys review the public financial disclosure reports of Presidential nominees prior to their Senate confirmation hearings and consult with the appointees and/or the agency ethics officials, as necessary, to bring the appointees' financial interests into compliance with applicable Federal conflict-of-interest laws and regulations.

The monitoring and compliance staff of OGE conducts reviews of the adequacy and effectiveness of Federal agency ethics programs, including the public and confidential financial disclosure systems, standards of conduct regulations, and ethics training and counseling programs. The compliance staff conducts training programs for agency ethics officials, employees and other interested groups and has recently initiated a training program for regional ethics officials to be given in all 10 standard Federal regions. The compliance staff also reviews the annual and termination reports of approximately 900 Presidential appointees each year and works closely with agency ethics officials to insure that such reports are accurate and complete.

It is important to note one function that was not given to the Office of Government Ethics by the Ethics in Government Act. The Office was given neither the mandate nor the manpower to staff its own investigations of conflict-of-interest or standard-of-conduct allegations in the executive branch. Rather the act's legislative history shows the Office of Government Ethics' role is to direct a decentralized system of ethics advice and enforcement where agency personnel—usually either the designated agency ethics official or

the Inspector General's staff—would conduct investigations which were deemed necessary either by that agency or by the Office of Government Ethics, and would make any necessary referrals to the Department of Justice.

In the wake of the 1980 election, with the advent of a change in administrations, OGE was faced with the first Presidential transition under the act. The test of the Office was whether it could review and process the public financial disclosure reports of Presidential nominees and render opinions to the Senate confirmation committees at the pace set by the White House nomination process.

Following the election, OGE immediately developed lines of communication with the Presidential transition team and, subsequently, the White House Personnel Office and the Counsel to the President. Key staff members of each Senate confirmation committee were contacted to discuss operating procedures, and almost daily contacts were maintained throughout the 1981 transition year. An OGE attorney was assigned to work with the transition team to smooth the process and to assist in any and all matters concerning the act. A computer system was developed for OGE to keep track of the financial disclosure reports from approximately 800 appointees throughout the confirmation process and to be able to give a daily status report to the White House.

A procedure was devised whereby the President-elect's notice of intent to nominate was treated as tantamount to nomination for executive branch review purposes, and receipt of an intended candidate's financial report was deemed to be receipt of a form for purposes of public disclosure.

The procedures improvised by OGE worked well, although much of what was done was without any statutory guidelines. I would suggest that the Office of Government Ethics' handling of the 1981 transition is a good example of administrative solutions being created to fill statutory voids.

Despite initial fears and media reports that the Ethics in Government Act of 1978 would be a bottleneck in staffing the new administration, this did not occur. Since 1981, over 1,000 Presidential appointees have come into the executive branch of Government with almost every conceivable type of financial interest. Agreements reached with appointees to protect them and the Government against conflicts of interest have withstood the scrutiny of the Senate, the White House, public interest groups, the GAO, and the news media. We believe that the Office fully met the test provided by the transition in a highly professional and timely manner. The protections set in place for the nominee, the public, and the Government heightened the sense of integrity and openness in the Federal Government.

Title IV of the Ethics Act established OGE as a statutory agency in the Office of Personnel Management. Section 402(a) specifies that OGE shall operate under the general supervision of OPM.

In general, this broad directive of section 402(a) of the act has been carried out by OGE acting independently of OPM in its dealings with other Federal agencies on issues involving substantive conflicts of interest and standards of conduct. On the other hand, OPM has at all times exercised administrative control over the budgetary, personnel and logistical operations of OGE. OGE has an

advice and consent Presidential appointee to carry out its statutorily defined programs and responsibilities. Consequently, OPM has seen its major role vis-a-vis OGE to be that of providing it with adequate support from OPM's administrative offices.

The budget and staff levels for OGE for fiscal years 1980 through 1983 are set forth in my written statement. Our fiscal year 1983 budget level is $1,016,000. Our fiscal year 1982 budget level was $951,300.

OGE does not have its own separate budget but rather receives its funds from OPM's appropriated funds. On the whole, OGE has received what it needs from OPM in terms of budget and staff, but only as a result of special pleas and agreements. Both Director Donald Devine and Deputy Director Loretta Cornelius have been supportive of OGE and its mission. They have been responsive to direct appeals from the Office for necessary funds and additional staff, and thus far the Office has received adequate resources.

As a part of OPM, OGE is subject to its management policy decisions; this can have a massive, unintended effect on our small Office. For example, when President Reagan directed a personnel freeze upon taking office in 1981, OGE was swept into it, because it was treated like any other OPM entity. Had OGE been considered a separate agency for hiring purposes, it would have escaped an unnecessary hardship, because the freeze directive itself exempted agencies with less than 100 employees.

Similarly, when OPM reduced its budget in 1982 by means of reductions in force, so-called RIF's, OGE first had to argue to OPM that riffing its tiny staff would be disastrous to its mission and was budgetarily unnecessary. Having been successful in that argument, OGE still had to absorb the resultant bumps from other personnel in OPM who were riffed, and thereby OGE suffered dislocating personnel losses anyway.

Because of OGE's small staff and budget, a small ripple in OPM's budget and staffing plans becomes a tidal wave when it impacts on OGE. Accordingly, administrative changes are planned which would give OGE a separate line item within OPM's budget. This would insure congressionally mandated review and funding for OGE, separating the Office from fluctuation in OPM's budget process.

The Ethics in Government Act requires the Director of OGE to review the financial reports of executive branch appointees and report his opinion on their conflicts, if any, to the Senate committee considering the nomination. The Director must be responsive to both the President and the Senate and yet keep his independence from both. To be effective, the Director must make difficult, delicate decisions in an independent apolitical manner. He should have the confidence of the President but should also feel free to act apart from the President's wishes.

In spite of these potential tensions, OGE has functioned effectively and without political interference in both Republican and Democratic administrations under the existing appointment system. There is no compelling reason to change the terms of appointment and removal of the Director.

We support the 5-year extension of authorization provided for in H.R. 1650. The need for a centralized Government ethics office has

long been recognized. A 1960 report of the Association of the Bar of the City of New York recommended the establishment of such an office, noting that the administrative process could provide a viable alternative to the broad ax of criminal prohibition and could, in addition, reduce the risks the conflict-of-interest laws were intended to meet.

In the years thereafter, various bills to create an ethics office were introduced. The GAO recommended the creation of such an office in a 1977 report. In remarks made at OGE's 1982 annual conference, Roswell Perkins, a major author of the 1960 New York Bar Study, deemed the creation of the Office of Government Ethics "by far the most important and positive accomplishment of the 1978 act," in view of the fact that "it took nearly two decades * * * to get the job done, after strong and clear recommendations that had been made to that effect."

The 5-year reauthorization will provide the appropriate means to review the activities of OGE, while maintaining sufficient independence for effective performance of Office functions.

Chairman Rodino's letter inviting me to testify here today asked that I include in my testimony any recommendations I might have for amending the Ethics in Government Act. I will not discuss in detail any of my proposals but rather will briefly mention a few areas where improvements are needed. These proposals are not intended to be all-inclusive but rather are aimed at those portions of the law which I believe are most in need of attention.

First, I propose that the act be amended simply to eliminate public disclosure by employees in the career civil and career military services. Requiring careerists to file confidential rather than public statements retains the simplicity of existing law but reaches a better balance between the privacy interests of Government employees and the public's interest in preventing conflicts of interest.

Another area of the law in which a number of problems have arisen is the portion dealing with blind trusts. The rules need to be clarified and simplified. Qualified diversified trusts should be available to all executive branch employees; provision should be made for old family trusts; and the act's concept of excepted trust should be clarified.

The law governing postemployment conflicts of interest has long been a subject of much debate. Section 207(g) of title V, which has actually nothing to do with postemployment per se, but rather deals with the activities of partners of present-day Government employees, needs to be clarified.

I would also recommend that Congress abolish designation of senior employees and separate nonstatutory components. Experience has shown that the designation process is both unnecessary and unworkable.

In summary, Mr. Chairman, the Office of Government Ethics has gotten off to a good start in its first 4 years of existence. While some executive branch conflict-of-interest problems regrettably still exist and still make news, far more have been prevented and never become headaches or headlines because of the existence of the Office of Government Ethics.

I, therefore, want to express my support for legislation reauthorizing the Office of Government Ethics, an office which has success-

fully fulfilled its important obligation to provide overall direction of executive branch policies regarding conflicts of interest.

I will be happy to answer any questions you may have.

Mr. HALL. Thank you, Mr. Scott. Thank you for your excellent presentation.

How many employees does the Office of Government Ethics have at this time?

Mr. SCOTT. At this time, Mr. Chairman, we have 21 employees.

Mr. HALL. Do you anticipate hiring more people if this authorization is extended?

Mr. SCOTT. Yes; a few more, but certainly no great number.

Mr. HALL. I believe your budget for last year was $951,300 some odd dollars.

Mr. SCOTT. That's correct, Mr. Chairman.

Mr. HALL. You're asking for $1,016,000 for the next——

Mr. SCOTT. That's our present budgetary figure for fiscal year 1983. For fiscal year 1984, we're asking for a slight increase to $1,093,000, so that would be approximately——

Mr. HALL. How will that money, additional money be used? What is the cause for the additional funds?

Mr. SCOTT. Well, first of all, Mr. Chairman, we, as I say, we have authorized right now a ceiling of 23.5 people. We have 21 actually here in our office. With no other frills—if we hire two more people that would be the extra money right there. As you may know, there will be a permanent director announced soon. His salary, obviously, is not coming out of our budget at this time. We also have our Deputy Director post unfilled. Those are hefty salaries to pay.

Mr. HALL. Well, now you've been Acting Director for how long? Since last October?

Mr. SCOTT. For 6 months, since last September.

Mr. HALL. September. You say a nominee will be named shortly?

Mr. SCOTT. Yes; Mr. Chairman, I anticipated you might ask me that question this morning, and I saw with interest yesterday, there was on page 17 of the Washington Post, a little something in the paper to that effect. So, that has been apparently set forth from the White House.

Mr. HALL. Well, do you know when that nominee will be named?

Mr. SCOTT. I don't know—according to the newspaper, which is all I know, he will be nominated. It named a person, and it gave no date, but I understand it will be very shortly.

Mr. HALL. The paper knows, but the organization—OK. [Laughter.]

Mr. SCOTT. We have not been informed, Mr. Chairman, of a date. I guess that's the way to answer it.

Mr. HALL. I guess we'll have to read the Post to see what's going to happen.

I understand also that the office of Deputy Director has been vacant since—well, nearly a year ago, April 1982.

Mr. SCOTT. That's correct, Mr. Chairman. Since I had control over that a good deal myself in terms of filling that vacancy once Mr. Walter resigned in September—that's a straight, from my perspective, budgetary decision. We have budgetary limits that are such that the way to meet the budget that OPM gave us was to not have a Deputy Director.

Mr. HALL. Well, do you think there will not be a Deputy Director in the future?

Mr. SCOTT. No; I think there will be. I think that's one of the reasons—going back to your earlier question—that we will need some more money.

Mr. HALL. Well, has the Post indicated anything about that? [Laughter.]

Mr. SCOTT. Mr. Chairman, they have not, I am happy to say. I believe that will be the new Director's decision and, of course, he will have to consult with OPM.

Mr. HALL. I am curious. Why have these two very important posts remained vacant for such a long time, which I consider quite an extensive period of time, due to the importance of the posts themselves?

Mr. SCOTT. Well, I guess, Mr. Chairman, there are a number of parts to the answer to your question. The first, of course, I should say I cannot speak for the White House, but I do know that in my conversations with them, that they certainly have often said to me how they do think it is an important position. They wanted, obviously, to take time to see who the next permanent person would be, and they also expressed confidence in me and the staff to carry on the important work in the way that we had been doing before Mr. Walter resigned.

Mr. HALL. Do you think that the Director should have a set term in office for so many years, or how do you think that should work?

Mr. SCOTT. Mr. Chairman, are you asking me for my personal views on that?

Mr. HALL. Yes.

Mr. SCOTT. The reason why I say that is, of course, as you know from my written statement that I've submitted, I said that was not necessary, but my personal views on that are that I think a term would be an improvement over the present structural setup.

Mr. HALL. Is there a precedent in other executive branch agencies for a term of year?

Mr. SCOTT. Excuse me, sir?

Mr. HALL. Is there any precedent in other executive branch agencies for a term of years to be set for the Director?

Mr. SCOTT. Yes, sir, there is.

Mr. HALL. Is it working better than the way it is working in this organization now, to have a set number of years?

Mr. SCOTT. Well, that's a difficult question to answer, Mr. Chairman. As I said in my testimony, we have had no problem in terms of the way it's worked to date. On the other hand, we see potential problems that may exist in the future. So, I wouldn't say it was better or worse, but I think it would be an improvement to fend off future problems.

Mr. HALL. Should there be any changes in the institutional structure of the Office of Government Ethics? Should it be a separate agency, separate from Office of Personnel Management? Should it submit its budget request directly to Congress? Should the Office of Government Ethics remain in the Office of Personnel Management but be funded separately from them?

What's your position on that?

Mr. SCOTT. Well, again, Mr. Chairman, that's certainly a very probing and excellent question. We—just speaking for myself—have advocated that we become a line item in the budget. We have no separate budgetary item at this time. Certainly, I would urge this committee to—I think it would either be taken care of administratively on the executive branch side or should be taken care of statutorily by an amendment to the Ethics in Government Act to make us a separate line item. I think that would help our budgetary problems vis-a-vis OPM or OMB's wishes to have different ideas of how our office should be run.

Second, I think that we would wish, again speaking for myself, more independence in issuing regulations. We now have to do that through OPM according to the statute. And speaking for myself, I believe that we should have the power to issue them ourselves.

Mr. HALL. Has there been any conflict between the two agencies in the issuing of regulations?

Mr. SCOTT. No; again, there has not. But we feel that with our separate statutory responsibilities in this area that we really shouldn't have to face potential problems there at all, because this is something that is in our area of expertise and that we're given a responsibility to do. And that is why we seek this role.

Mr. HALL. I understand that in the present existing structure that it is the policy of the Office of Government Ethics to do an annual review of the financial disclosure forms of all the White House staff, you're required to file such forms.

Mr. SCOTT. That's correct, Mr. Chairman, it's a policy.

Mr. HALL. Should this act be required that be mandated or require an annual audit rather than just a policy requirement?

Second, are you having any difficulty in getting an examination or reviewing of those disclosures, when it's not something that the people know that you must do? Are they submitting those forms without any problem?

Mr. SCOTT. In regard to your first question, Mr. Chairman, we would be in favor of such an idea. As I understand the question, it would be enacting our policy into law.

Mr. HALL. Correct.

Mr. SCOTT. We would be in favor of that.

In regard to your second question, we have had no problems in getting to look at financial statements that we requested.

Mr. HALL. Thank you. Mr. Kindness, I yield to you.

Mr. KINDNESS. Thank you, Mr. Chairman, and thank you, Mr. Scott, I appreciate the overview you've given us in your testimony today.

In your process of reviewing financial disclosure statements, would you describe what mechanism is—or policy is in place to determine when the review or audit would be done? In how many cases, or how selective would you be about audits of statements?

Mr. SCOTT. Well, Mr. Kindness, as a matter of course, we review all of the Presidential appointees' statements that require advice and consent of the Senate, as well as the President's and the Vice President's and those of the designated agency ethics officials. Those are the major groups that we see when they take their positions and when they file their annual statements, and when they leave the Government.

EFFECT OF COMPACTS

In my later comments on the Northwest compact, I will cover the effect on States outside the region.

Our view on the effect of the compacts on the current pattern of transportation of low-level radioactive waste when regional disposal sites start to operate is that there should be an improvement, since transportation distances should shorten from the present situation where all waste must go to two sites in the Western States and one site in the Southeast.

We would expect that the Northwest and other compacts can be made consistent with Federal regulation of low-level radioactive waste in the areas of packaging, transportation, and financial arrangements for closure and post-closure care.

The Northwest region was quick to respond to the major challenges of the Low-Level Radioactive Waste Policy Act, and was the first in the country to be enacted by the required number of qualifying States.

A number of other compacts have reached the point where the negotiators have approved final language and submittal to their respective legislatures is anticipated this winter. This list includes the Rocky Mountain, Central, Midwest, Southeast, and mid-Atlantic compacts.

We hope that the NRC's comments will contribute to a long-term, efficient, and effective institutional framework for dealing with the problem.

Upon request, we provided written comments to each of the compact groups on their draft compacts. Our specific comments on the Northwest compact are attached to my statement, but there are basically five issues we would like to address.

The effective date of July 1, 1983, for exclusion of out-of-origin wastes is inconsistent with the Low-Level Radioactive Waste Policy Act. Second, the definition of low-level wastes as it appears in the compact is inconsistent with that in the Low-Level Radioactive Waste Policy Act. Third, our comments have been directed to discriminatory provisions in the compact, which we believe to be an impediment to interstate commerce, in regard to waste generated outside the region prior to January 1986. These provisions include 100 percent inspection of all shipments and a requirement for a binding liability agreement from each State outside the compact from which the material is shipped. Because S. 2829 only addresses the effective date for exclusion of our-of-region wastes, this disparity remains as a concern to us for the period from the time of congressional approval until January 1, 1986.

Fourth, we have proposed that States can enter into an agreement with NRC pursuant to section 274i of the Atomic Energy Act of 1954, as amended, to provide for onsite inspection of certain NRC licensees.

CONCERN OVER LANGUAGE

Fifth, we are concerned that language such as found in articles III and IV(3)C of the Northwest Compact may appear to authorize conformance to host State regulations and requirements even if inconsistent with NRC or Department of Transportation regulations on

packaging and transportation. Language on adherence to packaging and transportation requirements and regulations of the host State could affect States and licensees both within and outside of the region and conflict with the authority of the NRC and DOT.

Finally, we raised the issue of broad management function in several compacts because of the interlocking definitions in the compacts and functions assigned to compact commissions which appeared to give them aspects of regional health and safety regulatory authorities. In our view, this matter can be addressed on one of three ways: specific language in each compact which addresses the matter; specific language in the bill providing congressional consent; or an appropriate legislative record on the matter including written statements from each compact group clarifying their intent.

In summary, we believe that it is possible for compacts covering all regions of the country to be in place by January 1, 1986. We hope that our role in this process will assist the States in resolving this important matter for disposal of low-level radioactive waste.

Thank you.

Senator SIMPSON. Thank you very much, Mr. Kerr.

Mr. Lawrence, if you please.

Mr. LAWRENCE. Thank you very much Senator Simpson. The Department of Energy is pleased to be here and have an opportunity to comment on the Northwest compact. DOE fully supports the policy embodied in the Low-Level Radioactive Waste Policy Act of 1980 as passed by Congress and believes that the Northwest States are to be commended by their having drafted and finalized the first such interstate compact to come before the Congress for ratification.

Turning to the questions which were raised in a letter to the Department, the definition of low-level waste as set forth in the Low-Level Radioactive Waste Policy Act, is consistent and held by both DOE and NRC. As NRC has pointed out however, this is not consistent with the definition the Northwest has used in their compact.

I would also like to point out that recently NRC, EPA, and DOE have adopted a level of 100 nanocuries per gram of transuranic waste as being the threshold level for disposal of either transuranic or low-level waste. This level is inconsistent with the level of 10 nanocuries as set forth in the Northwest compact. We believe this latter figure should be adjusted to 100 nanocuries per gram.

We also believe that early congressional consideration and approval of the Northwest compact would stimulate other States outside the region to move quickly toward establishment of their compacts.

EFFECT ON TRANSPORTATION

With respect to the effect of the regional compacts on transportation, the Department of Energy has conducted an analysis of transportation in a report which was recently prepared and submitted for the record. Based on our evaluation, we find that regional sites for low-level waste disposal would result in about a 50-percent reduction in the distances, and therefore the cost and risk associated with the transportation of radioactive low-level waste would be reduced.

Turning now to duplication of Federal regulations, since the Department of Energy regulates its own low-level waste and the Department of Transportation and NRC are responsible for other commercial generators, I would defer to them as to the effect of the compact on Federal regulations.

There are some issues of specific concern to DOE with respect to the Northwest compact. As previously mentioned, we believe that the threshold level for transuranic waste needs to be addressed and should be changed to reflect the new standard. Also, the Low-Level Radioactive Waste Policy Act excludes certain Federal facilities from the provisions of the State compacts. Although the compact which the Northwest has adopted excludes Federal waste facilities from the definition and purview of the compact, Federal generators are not given clear exemption and we believe this should be rectified in order to be consistent with the Law-Level Radioactive Waste Policy Act.

DEPARTMENT'S SUGGESTIONS FOR IMPROVEMENT

We have submitted in written testimony suggested language which would allow the compact to be more consistent in that regard.

Article III of the proposed Northwest compact also requires periodic unannounced inspections of the generators by the State in which they are located. Since the Department of Defense has a number of facilities which use commercial low-level waste burial but which cannot, for obvious reasons, be open to anyone for unannounced visits, we believe that that compact should recognize this point. Exclusion of Federal generators, according to the language included in my testimony, would, in my view, take care of it.

With the exception of these points, we believe that the Northwest compact will enhance the enforcement of Federal regulations and we support it.

In summary, the Department supports the spirit and substance of the Low-Level Radioactive Waste Policy Act. We believe that early congressional consideration and approval of compacts, as they are introduced, will emphasize congressional commitment to a regional system of disposal facilities managed by the States. We applaud the Northwest region and support them in their efforts to organize and implement their compact.

Senator SIMPSON. Thank you very much.

Mr. Anderson please.

Mr. ANDERSON. Mr. Chairman, I am pleased to appear today to present the views of the Department of Transportation regarding the Northwest compact. At the outset, I would like to provide a brief general description of the Department's program and its relationship with State and local laws. The Hazardous Materials Transportation Act, enacted in 1975 provides broad general authority to the Department to issue regulations dealing with all aspects of the transportation of hazardous materials, including packaging, shipping papers, marking and labeling of packages, placarding of vehicles, and handling of materials. We, in close coordination with the Nuclear Regulatory Commission, have issued regulations comprehensively covering radioactive materials, including low-level waste.

ADVISORY ADMINISTRATIVE PROCEDURE ESTABLISHED

Section 112(a) of the HMTA provides that State and local laws that are inconsistent with the Federal requirements are preempted. In order to assist in the interpretation and application of that provision,

the Materials Transportation Bureau, which is the element of the Department of Transportation that administers this law, has established an advisory administrative procedure for issuing inconsistency rulings.

In issuing these rulings, we look primarily to two judicially developed tests. One, known as the dual compliance test, is whether it's possible to comply with both the State and Federal law; the second and more important, known as the obstacle test, is whether the State or local law presents an obstacle to the accomplishment of the purposes of the Federal requirements.

In looking at purposes of the HMTA, we focus primarily on the overriding purpose of enhancing overall public safety so that if a State law has an effect of reducing overall safety, it would be inconsistent. The second purpose we look at is the specific purpose of section 112, the preemption provision, which was to promote the adoption nationwide of a uniform set of transportation standards for hazardous materials.

With regard to the Northwest compact, there are three aspects of the compact that cause us some concern. The compact itself does not establish any inconsistent requirements, but as implemented by the compact States, inconsistent requirements may come about.

First of all, with regard to packaging standards, you've heard before that there are provisions in the compact that require the compact States to authorize containers and to prohibit use of other containers, and the compact explicitly does not preclude the compact States from adopting additional or more stringent requirements. DOT has taken the position in its inconsistency ruling that its packaging standards are exclusive in transportation.

RATIONALE FOR DECISION

The rationale for that decision is that to permit States and localities to adopt differing standards would possibly result in the adoption of incompatible standards, which would require repackaging in transit, which of course would not be conducive to safe transportation.

This potential of the compact could be eliminated by the inclusion of a limitation phrase in the authorization provision such as "to the extent authorized by Federal law."

Second, article IV of the compact as has been discussed, requires that nonparty States sending materials into the compact region issue certificates that would accompany the shipment at the disposal facility. DOT has also taken the position that its shipping paper requirements are exclusive for transportation. The rationale for that decision is that the primary purpose of shipping papers is to alert people, particularly emergency response personnel, to the hazards of the material being transported so that they may respond appropriately in the event of an accident. We concluded that additional paperwork, or additional shipping paper information, may have the affect of causing confusion at an accident scene and thereby reducing safety. We are concerned, therefore, that the certificate requirement may be applied in transportation, and that would be inconsistent. If, however, the certificate is required only at the disposal facility, that would be

outside of the scope of the Hazardous Materials Transportation Act and therefore, not inconsistent with it.

Finally, in relation to article IV, the certificate requirements would mandate an inspection by the nonparty State of origin. While we have a general policy that is strongly in support of State adoption and enforcement of regulations that are consistent with the Federal requirements, we are concerned with mandatory inspection requirements in that they may result in unnecessary delay of these shipments. While that's really a function of the nonparty States' implementation of the requirement, we would caution the party States to assure that nonparty States not impose unnecessary delay on transportation.

As I mentioned, the primary problems that we would have with the Northwest compact are not in the compact itself but in the way in which it may be implemented. Other compacts contain provisions that reduce substantially the likelihood of inconsistencies developing. These disclaimer provisions state that nothing in the compact shall be construed to abrogate or limit the applicability of any Federal law, and we would encourage the Congress to adopt a similar provision as part of the Northwest compact.

Finally, with regard to the effects on transportation, we would concur with the opinion of the other witnesses that the overall effect would be a substantial reduction in transportation because of the reduction in the distance between points of generation and points of disposal. That can only lead to an improvement in overall public safety since one of the primary factors in transportation risk is distance traveled.

So we strongly encourage the States to develop the compacts and we look forward to working with them in their implementation.

Senator SIMPSON. Thank you very much.

Let me ask a few questions first of Mr. Kerr. You note in your testimony that the definition of low-level waste that appears in the compact is inconsistent with the definition in the Low-Level Waste Policy Act. Just a bit more of a technical nature, could you be a bit more specific on the definition difference and what you see as a potential problem that those differences pose?

Mr. KERR. Yes, two I think. One is because of the way they have defined low-level waste as meaning nuclides emitting primarily beta or gamma radiation. There are licensees that use source material, uranium and so on in research projects, universities, industry. Activities like that which would appear to be prohibited them from sending their waste to the disposal site. That's one.

The other is transuranic waste which Mr. Lawrence spoke about. We believe that a numerical limit on the transuranics should not be put in the legislation; that it's more properly handled through the regulations and that is what NRC has done in our recently passed part 61. By the way, part 61 has two units, 10 nanocuries per gram for what we call class A waste which has some modest requirements on it, class C waste can go to 100 nanocuries per gram with additional containment, stability, and depth of burial requirements on it.

Senator SIMPSON. Just for the purpose of this field hearing, would you very briefly describe nanocuries and transuranic waste, just in the very briefest form?

Mr. KERR. Transuranic wastes are those isotopes whose atomic numbers are above uranium in the periodic chart of the elements, so it's like americium and plutonium. A nanocurie is a very small number which is 10 to −9 curies, or a decimal point followed by 8 zeroes and a one with a curie being the standard unit of radioactivity. So it is a very small amount, but because of the high toxicity of transuranics, we must talk in lower numbers.

Senator SIMPSON. The NRC has recently promulgated requirements for licensing of near surface low-level waste disposal facilities. In addition, the NRC is responsible for the regulation under part 71 of certain aspects of transportation of those wastes. What authority does an agreement State, under current law, have to deviate from those Federal requirements, specifically I would wonder what area would an agreement State have authority to impose requirements in addition to or more stringent than those of the NRC?

Mr. KERR. In terms of part 61, Senator, we work very hard with the agreement State to try to come up with as compatible a set of regulations as possible. We have met with all three of the waste burial States to discuss with them how they might implement part 61 and we expect certain aspects of part 61 to be matters of compatibility. We expect to see a very high degree of uniformity. Now as to the question of whether an agreement State can impose more stringent requirements at a burial site, they can and there are situations where this occurs. One in particular relates to DOT. For example, liquids can be shipped very properly under DOT regulations but part 61 has a waste solidification requirement so that the quantity of liquids for burial is very small and therefore, the burial site operators of the agreement States have laid on additional requirements for solidification which indirectly affects the waste form shipped.

There have been others, like South Carolina which has never allowed plutonium to be buried at their site. So there are areas where they can have additional restrictions.

Senator SIMPSON. Let me ask then, Mr. Lawrence a question and a final question for Mr. Anderson.

One of the issues you raised in your testimony, Mr. Lawrence, concerns the 10 nanocuries definition in the compact and the potential conflict just discussed with the nanocurie definition and the transuranic waste. Does that difference of the two definitions create a potential for a category of transuranic waste between 10 and 100 nanocuries that might not be disposed of in the region facilities and would therefore have to go to some other regional site?

Mr. LAWRENCE. That's correct Senator. We are afraid that the waste between 10 and 100 nanocuries, if excluded from this burial site and all other commercial burial sites would have to be stored until a new disposal site were available for it. This should be rectified.

Senator SIMPSON. What progress is the Department of Energy making in this area of low-level waste incineration, reduction at the present moment?

Mr. LAWRENCE. The low-level waste management program has several incineration projects in various stages of development. With program support an incinerator for medical waste has been installed and tested at the University of Maryland Hospital in Baltimore. Emission

testing has been completed and the university is currently awaiting licensure by the State of Maryland.

As Mr. Pemberthy noted, one of his glass furnace incinerators is undergoing tests by the Department.

To date, only tests with nonradioactive waste have been conducted. While the concept of glass furnace incineration has been proven, several practical engineering problems remain to be solved for its use with radioactive material.

The Department has also tested a controlled air incinerator to burn power reactor waste. Because of satisfactory results from these tests, the Department is supporting the licensing of an incinerator at a commercial power reactor. DOE support is being provided to develop the required documentation to support a license submittal to the Nuclear Regulatory Commission. This is a project funded jointly by the Department and industry.

There are a number of other technologies for reducing the overall quantity of low-level waste through incineration. I have only discussed three, but there are several others. We believe that the rising costs of low-level waste disposal will force many generators to look more and more to various means of reducing their costs for low-level waste disposal. Basically our program is aimed at assisting industry in undertaking the proof of concept demonstration of such technologies. Support is also being provided to establish the necessary institutional framework to readily utilize this technology. Our funds and efforts are therefore split between technical and institutional support. This is being accomplished by working with the States in the establishment of a compact.

Senator SIMPSON. Mr. Anderson, finally, your testimony indicates that any State or local requirement that is "inconsistent with DOT transportation regulations is preempted by the Federal regulations and therefore impermissible." Are there areas in the transportation field such as enforcement of DOT regulations where the States have a legitimate interest where the interest could be pursued in tandem and in concert with DOT regulations?

Mr. ANDERSON. Yes, Senator, and in fact, DOT is currently working very closely with the States in developing programs for the improvement of their enforcement capabilities. We have, I believe the number is 16 States, where we have established contractual arrangements, and in fact Washington State was the first such State, to assist them in the development of their own enforcement capabilities.

A part of those contracts require the States to adopt the Federal regulations. Governor Spellman referred to transportation safety problems existing out here several years ago. These problems were not a result of the standards themselves, but of failure to comply with the standards. To the extent that we can encourage the States to assure that carriers in their States are complying with Federal standards, we can enhance the public safety.

Senator SIMPSON. One final question. I'm curious; you noted in your testimony that inspection of low-level waste shipments by nonparty States may result in unnecessary delay and therefore increase the public exposure from those shipments. Is your reason for that conclusion that nonparty State inspections would increase the number of

total inspections or is there something different about a nonparty State inspection that results in some greater amount of time or care being taken?

Mr. ANDERSON. Our concern is not with whether the State performing inspections is a party State or a nonparty State, it's with the logistics of performing that mandatory inspection. For example, there has been a law passed in one State that requires, in order to accomplish the mandatory inspection, notification to the State after a shipment has been loaded and then transportation by the State official to the generation site and inspection before a shipment can be moved. That may result in several hours or even days delay in transportation.

There are other forms that such inspections could take that would not cause such delay, such as designating a port of entry or port of exit as the inspection point that the carrier could merely stop at.

Senator SIMPSON. I thank you.

Senator GORTON. Mr. Lawrence, how long is it likely to be before Mr. Pemberthy's or Baltimore Hospital's experimentaal techniques will be licensed for general use or any other similar techniques for disposal or compaction?

Mr. LAWRENCE. Well, Senator, I can't say how long it will take to license either incinerator. The development program for Mr. Pemberthy's incinerator only includes engineering design and testing. Phase one of that test is about completed. Some engineering problems with meeting EPA standards have been uncovered and are yet to be resolved.

Basically, our philosophy is for DOE to fund technology development to a point of technical operability and to transfer this technology to the marketplace. Economics and other market forces would then decide whether industry pursues licensing and if it would be applied in general practice.

There are a number of systems already in use for compaction and under development for various other forms of treatment of low-level waste.

Senator GORTON. Which are licensable now?

Mr. LAWRENCE. Compaction, primarily, but also other technologies that are considered good management practice.

Senator GORTON. Perhaps Mr. Kerr.

Mr. KERR. I would not like to comment on how long that particular one might take, but let me point out——

Senator GORTON. In general terms.

Mr. KERR. There are certain licensees approved today to incinerate radioactive material. One thing you have to remember is that if the radioactive materials are volatile and go up the stack, you have to consider that. It's not a matter that everything is going to remain in a small package. I know one institution, happens to be in an agreement State, a medical institution, has not sent any wastes off site to be buried since the 1979 crisis. They looked at things and decided they could store the wastes for a while, hold them for decay, and incinerate some, so they don't send anything off site anymore. So there are some of these methods that are already approved in agreement States and by NRC.

Senator GORTON. In more general terms, I thank all three of you for your compliments on this compact and the bill although after

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m.
Wednesday, March 16, 1983

STATEMENT OF

ROSSLYN S. KLEEMAN, ASSOCIATE DIRECTOR
FEDERAL PERSONNEL AND COMPENSATION DIVISION

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS
HOUSE COMMITTEE ON THE JUDICIARY

ON

REAUTHORIZATION OF THE OFFICE
OF GOVERNMENT ETHICS

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss a 5-year extension of authorization for the Office of Government Ethics (OGE) as called for in H.R. 1650.

The General Accounting Office (GAO) was an advocate for the establishment of an office of Government ethics, long before the Ethics Act of 1978 was passed. We believed in the need for such an office because we were aware of the significant problems agencies were having with their financial disclosure systems. We had identified these problems in a series of reviews begun in 1974. And, based on these reviews, we concluded that weaknesses in agency disclosure systems stemmed primarily from the

low priority agencies gave to standards of conduct and financial disclosure systems. Many employees were unaware of the requirements and, because they were unaware, they often placed themselves in possible conflict-of-interest situations. As a result, both their credibility and that of their agency were open to question.

In February 1977, [1]/ we recommended that the President establish an executive branch office of ethics, either as an independent office or as part of the Executive Office of the President. At the same time, we recommended that it be given adequate resources for addressing problems of enforcement and compliance. We suggested that the office be responsible for the following actions:

--Issuing clear standards for ethical conduct and equally clear regulations for financial disclosure.

--Rendering opinions on matters of ethical conduct and disseminating such advisory opinions to all agencies,

--Developing financial disclosure forms to obtain information on relevant employee interests.

--Periodically reviewing the effectiveness of agency financial disclosure systems.

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[1]/"Action Needed to Make the Executive Branch Financial Disclosure System Effective" (FPCD-77-23, Feb. 28, 1977).

--Providing a continuing program of information and education for Federal officers and employees.

--Implementing and managing a financial disclosure system for Presidential appointees.

In an August 1977 report [2]/ concerning financial disclosure by high-level executive officials and an August 1978 report [3]/ concerning post-Federal employment conflicts of interest, we reiterated our belief in the need for a central ethics office in the executive branch and endorsed the concept described in then-pending legislation (S. 555 and H.R. 13676).

The Ethics in Government Act of 1978 established the OGE within the Office of Personnel Management (OPM). The OGE objective was to provide overall direction of conflict-of-interest policies for the executive branch. The Director of the office was given several specific responsibilities:

--To develop and recommend rules and regulations on conflicts of interest and ethics in the executive branch.

--To monitor and review compliance with public disclosure requirements, with other statutory financial requirements, and with internal review requirements.

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[2]/"Financial Disclosure for High-Level Executive Officials: The Current System and the New Commitment" (FPCD-77-59, Aug. 1, 1977).

[3]/"What Rules Should Apply to Post-Federal Employment and How Should They Be Enforced" (FPCD-78-38, Aug. 28, 1978).

--To consult with agency ethics officials on individual conflict-of-interest cases and to promote the understanding of ethical standards in executive agencies.

--To determing financial disclosure reports filed with OGE reveal possible violations of conflict-of-interest laws and regulations and, if they do, to recommend corrective action.

--To provide formal advisory opinions and to assist the Attorney General either in evaluating the effectiveness of the conflict-of-interest laws or in recommending appropriate amendments.

The responsibilities given to OGE generally agreed with those that we had recommended in our earlier reports.

In a recent report, [4]/ we discussed OGE's activities in carrying out its responsibilities. We found that in its relationship with executive branch agencies, OGE is filling an affirmative leadership role that we believed missing prior to passage of the Ethics Act.

OGE, through OPM, has issued regulations setting forth the elements necessary for an agency ethics program, the responsibilities of an agency head to that program, and the duties of a designated agency ethics official.

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[4]/"Information on Selected Aspects of the Ethics in Government Act of 1978" (GAO/FPCD-83-22, Feb. 23, 1983).

In line with its monitoring and compliance review functions, OGE reviews agencies' ethics programs. These reviews cover ethics programs in organizational subunits; public and confidential financial disclosure systems; agreements made by Presidential appointees; regulations for standards of conduct; post-Federal employment situations; and an agency's ethics education, training, and counseling programs.

OGE's staff also conducts training programs for agency ethics officials. During fiscal year 1983, OGE will expand its training efforts by combining regional compliance reviews with ethics training for field office personnel having ethics-related duties.

OGE's legal staff responds to legal issues raised by agencies, Federal employees, nominees, and the public. OGE also works closely with the Department of Justice on conflict-of-interest matters. The Director of OGE consults with the Justice Department's Criminal Division before issuing an advisory opinion on an actual or apparent violation of any conflict-of-interest law.

During the last Presidential transition, OGE's staff assisted the White House by performing early reviews of financial information on prospective appointees. This effort prevented Ethics Act requirements from becoming a bottleneck during the appointment and Senate confirmation process.

In conclusion, we believe that the need for a central office that offers affirmative leadership to executive branch agencies and provides direction for conflict-of-interest policies is an important today as it was prior to passage of the Ethics in Government Act of 1978.

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This concludes my prepared comments. I will be happy to answer any questions you may have.

Ms. KLEEMAN. I am pleased to be here today to discuss this 5-year extension of authorization for the Office of Government Ethics, as called for in H.R. 1650.

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As a result, both their credibility and that of their agency were open to question.

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At the same time, we recommended that it be given adequate resources for addressing problems of enforcement and compliance.

We suggested that the office be responsible for:

Issuing clear standards for ethical conduct and equally clear regulations for financial disclosure;

Rendering advisory opinions on matters of ethical conduct and disseminating such opinions to all agencies;

Developing financial disclosure forms to obtain information on relevant employee interests;

Periodically reviewing the effectiveness of agency financial systems.

Providing a continuing program of information and education for federal officers and employees; and

Implementing and managing a financial disclosure system for presidential appointees.

In an August 1977 report concerning financial disclosure of high-level executive officials and an August 1978 report concerning post-Federal employment conflicts of interest, we reiterated our belief in the need for a central ethics office in the executive branch, and we endorsed the concept described in the then-pending legislation.

We were pleased when the Ethics in Government Act of 1978 established the Office of Government Ethics. And the responsibilities given to the then-created Office of Government Ethics generally agreed with those responsibilities that we had recommended.

Mr. Scott discussed OGE's duties in his earlier testimony, so I will just say that in a recent report we discussed OGE's activities and duties in carrying out its responsibilities. We found that in its relationship with executive branch agencies, the Office of Government Ethics is filling an affirmative leadership role that we believe was missing prior to the passage of the Ethics Act.

In conclusion, we believe that the need for a central office that offers affirmative leadership to executive branch agencies and provides direction for the conflict-of-interest policies is as important

today as it was prior to the passage of the Ethics in Government Act in 1978.

And I'd like to add, too, that a new appointee has been announced. And we urge the Congress to give careful consideration to what we view as an extremely important position.

This concludes my prepared remarks. And I'd be glad to answer any questions you may have.

Mr. HALL. May I anxiously ask who this nominee is?

Ms. KLEEMAN. His name, as reported is——

Mr. HALL. By the Post? [Laughter.]

Ms. KLEEMAN. Yes; I believe that was where we did learn it.

Mr. David Martin is his name.

Mr. HALL. Is the person?

Ms. KLEEMAN. Yes.

Mr. HALL. Does the OGE have sufficient independence from OPM to effectively fulfill its statutory mandate, in your opinion?

Ms. KLEEMAN. We haven't addressed that question directly. But, in our present review, we found no specific problems in their relationship to OPM.

Mr. HALL. You're not saying it should be made a separate agency, in other words——

Ms. KLEEMAN. No.

Mr. HALL [continuing]. In the strict sense of the word?

Ms. KLEEMAN. No.

Mr. HALL. Does OGE have sufficient authority to require compliance with financial disclosure and conflict-of-interest laws as it is presently structured?

Ms. KLEEMAN. Well, the enforcement rests with the agency, and the Office of Government Ethics supplies the guidance in conjunction with the Department of Justice.

Mr. HALL. This may not be with—excuse me, go ahead.

Ms. KLEEMAN. I just wondered if you wanted to add anything to that.

Mr. MACCARONI. I would just say that yes, it is true, what we have seen, as Ms. Kleeman mentioned, in our recent report, that the work that OGE has done through its advisory opinions, through its monitoring, through its training, seems to be providing the leadership role, and it is really the agency's responsibility to enforce the standards.

Mr. HALL. This may be a question that should have been directed by me to Mr. Scott, but maybe you can answer it.

I recall some years ago in another hearing, dealing with immigration, that I asked David Crossland, who at that time was Acting Commissioner of Immigration, about the number of audits, the number of people or groups that were auditing his organization. He said at that time there were 43 different audits pending, and the amount of people that it took to comply with—and I am sure yours was one of the 43.

Ms. KLEEMAN. I am sure it was.

Mr. HALL. The thought entered my mind a moment ago, and you see this daily in your operations and the continuity of GAO—how many different agencies have access to the files of people that work in the various departments which we know that OGE has the responsibility to examine.

Ms. KLEEMAN. Well, I am not certain that I know the answer to that. I know we have access to the information. I imagine the Inspector General of an agency would be looking at records.

Are you thinking particularly of financial disclosure records?

Mr. HALL. Yes; financial disclosures.

Ms. KLEEMAN. Of course, the public ones are open to anyone who does want to see them.

Mr. HALL. Are there any other agencies of Government similar to the OGE, Office of Government Ethics, that has the statutory responsibility or, by policy, that can go to a financial or disclosure statement and peruse that or make it available to someone else?

Mr. MACCARONI. We have the authority to review the forms, but we don't release that information.

Ms. KLEEMAN. Don't make them public.

Mr. MACCARONI. Don't make them public to anyone else. We have the authority in our responsibility to audit the different types of systems.

Mr. HALL. In other words, you can audit those disclosure statements, but you don't have the authority to make that information available to some third party?

Ms. KLEEMAN. No.

Mr. HALL. The Office of Government Ethics does have authority to make those available to some third person if they meet with the requirements of the statute?

Mr. MACCARONI. For public financial disclosure, right?

Mr. HALL. Yes.

Mr. MACCARONI. I didn't mean to mislead you. We can look at public as well as confidential. We have the authority to do that, but——

Mr. HALL. Not to release that information?

Ms. KLEEMAN. No.

Mr. MACCARONI. Well, public disclosure would be open to anyone. The confidential forms are not.

Mr. HALL. I understand. I am talking about the confidential forms.

Mr. MACCARONI. We do not release that information.

Mr. HALL. Is there any evidence that agencies have classified certain employees below the level of GS–16 in order to assure that those employees would not have to file financial disclosure forms?

Ms. KLEEMAN. We have never looked at that subject. We have done some related work at the Defense Science Board, and again in the very famous Washington Post that we are discussing here today it was mentioned that Mr. Reid had an appointment at GS–15, step 9 with the Defense Science Board.

We have looked at some of the Defense Science Board members, and I don't believe they have any who are—any that we know of who are required to file public financial disclosure statements.

Mr. HALL. The individuals do file confidential statements, but not public statements?

Ms. KLEEMAN. That is the only agency that I can think of that we have looked at lately where the same thing may apply, the fact that they are not in the group that files for the public financial disclosure statements.

Mr. HALL. Does the General Accounting Office have any objections or qualifications at all to a 5-year extension of time of life for this agency?

Ms. KLEEMAN. No, sir, we have not—we have done a recent review of the Ethics in Government Act, but it was purely for information purposes. But based on that review, no, we have no recommendations or objections to authorization.

Mr. HALL. Thank you, Ms. Kleeman.

I recognize the gentleman, Mr. Kindness.

We have a vote on that is going to take about 15 or 20 minutes, so we might try to finish this witness before going to that vote.

Mr. KINDNESS. Thank you, Mr. Chairman. I would like to clarify this question about confidential material as related to public.

Would you describe what that is we are talking about?

Ms. KLEEMAN. The public disclosure requirements apply to certain levels of employees, the senior executives. Other Government employees do file confidential statements of financial disclosure, but those are not made public.

Mr. MACCARONI. It might help to clarify a little bit. The Ethics in Government Act addresses the public disclosure aspect. Confidential is covered under Executive order, but it is also identified more specifically in some of the laws relating to individual agencies.

For example, some agencies require all their employees to file confidential statements because of the type of work they do. Employees, for example, in the Department of the Interior would be required to file confidential statements at the minimum.

Mr. KINDNESS. But those are personnel who are not covered by the Ethics Act?

Ms. KLEEMAN. Public disclosure—right.

Mr. KINDNESS. But in all cases of those covered by the Ethics Act, those are public, right?

Ms. KLEEMAN. Yes.

Mr. KINDNESS. Could you give examples of some agencies where this is required beyond the Ethics Act requirements?

Mr. MACCARONI. Yes, sir, the example I just mentioned, Department of the Interior.

Mr. KINDNESS. Department of the Interior.

Mr. MACCARONI. We have gone in there on a couple of different occasions to look at the confidential process, financial disclosure process.

Mr. KINDNESS. And how far does that go—all employees?

Mr. MACCARONI. It varies, sir. We have looked at two different bureaus and we have been asked to look at a third bureau.

In one bureau it went down to the GS-13 level. In the other bureau it went to the GS-7 level. And my understanding of the one that we have been asked to look at now, it is all employees within the organization.

Mr. KINDNESS. And are there other examples you could cite?

Mr. MACCARONI. I believe just about all departments and agencies have confidential forms, yes, sir.

Mr. KINDNESS. Thank you.

I wonder, has GAO looked into the total cost, or could you supply the subcommittee a figure that estimates the total cost of the

ethics enforcement program; that is, OGE plus the in-house agency ethics programs.

Ms. KLEEMAN. We would be glad to try to furnish that for you. I don't have any figures on it right now. You have the OGE budget, but certainly the major responsibilities do rest with the agencies and the agency ethics officers. So, we can attempt to find out for you what that budget involves.

Mr. KINDNESS. I would appreciate it. Thank you. I yield back, Mr. Chairman.

[Information furnished subsequent to the hearing.]

The cost that may be most easily identified is OGE's operating costs, and for fiscal year 1983 that will be $1,016,000. Agency costs are difficult to determine because, for the most part, work is done on a part time basis and, therefore, specific line item costs are not identified.

Mr. FRANK. One quick question. We have heard the argument that the law deters people from coming to work for the Federal Government.

What is your evaluation of that?

Ms. KLEEMAN. We haven't found any evidence of that. We again have read about it in the paper or heard about it from other places, but I don't believe we have found any cases where we can prove that there was an actual deterrent.

We know that there are other Federal personnel policies that do stand in the way of recruitment——

Mr. FRANK. I see, but not, as far as you are concerned, in your experience, this act is not a deterrent to getting people to come to work for the Federal Government?

Ms. KLEEMAN. No, we haven't found any examples of that.

Mr. FRANK. Thank you.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. HALL. We will stand in recess until about 11:10 or 11:15 for this vote.

[Recess.]

Mr. HALL. Our next witness is Ann McBride of Common Cause. You may proceed.

TESTIMONY OF ANN McBRIDE, VICE PRESIDENT FOR PROGRAM OPERATIONS, COMMON CAUSE

Ms. MCBRIDE. Thank you very much, Mr. Chairman, members of the committee. I appreciate very much the opportunity to speak here today. We believe that the timely start that you are doing on the reauthorization of OGE will give clear time for it to be acted on before the September 30 termination date.

Common Cause believes that in the 5 years that the act has been in effect that it has worked well. We think that recent activities at the Environmental Protection Agency and other things which we have heard lately really make clear again why this and other laws which protect against conflict of interest continue to be necessary.

We believe that the Ethics Act has fulfilled its primary purpose of reducing conflict of interest, and it has really done it in two ways. One is that it has established a series of new rules, such as public disclosure, the creation of the Office of Government Ethics. But by doing this, it has really created for the first time, perhaps

for the first time, the other conflict-of-interest laws and orders and regulations that have been on the books for years to be taken seriously.

We believe that the Ethics in Government Act has enhanced public service because without clear guidelines what you have is the lowest common denominator setting the standard for the institution.

We believe clearly that the Office of Government Ethics should be reauthorized. While much enforcement, as we have talked about here this morning, remains on an agency-by-agency basis, we believe that the OGE has done a very good job in fulfilling its mandate of overseeing ethics in the executive branch. We believe it has performed well, that it deserves public and congressional endorsement, and we certainly do endorse it.

We talked this morning about the role that OGE has played in the confirmation process, and that really has been a very important contribution of reviewing the financial disclosures, making sure that nominees are in conformity with conflicts laws and regulations, and then, in essence, certifying to the Senate that this is so. This has been important.

But we believe that public confidence in this, as well as in all of OGE's other activities, is very closely related to the independence of the agency itself. We therefore believe that the statute should protect against potential political interference by having a fixed term for the Director rather than the present arrangement of the Director serving at the pleasure of the President.

As we know from the hearing this morning, we have all learned in the Washington Post that there is going to be a new Director named. We think that this becomes a very, very important action for both the Senate that has to confirm and a real test for the President in terms of this person, who will be nominated.

We really believe that one reason OGE has worked so well is because of the commitment of the former Directors and of the now Acting Director, Mr. Scott, who you heard from this morning, to the underlying mission of the agency and to ethics laws and regulations.

We believe, for instance, a lot of what they do in terms of bringing people into compliance has shown their real commitment. We have been very concerned because in the past 2 years significant numbers of questions have been raised about conflict of interest in this administration, questions about people in high positions from the Attorney General to the head of the CIA.

We have also had people within the administration, Mr. Fielding, the counsel, and others, being highly critical of the act and putting forth proposals that we think would gut the act.

When you put it in this context, we believe it is very important that the person who the President has nominated, and there is a name, be carefully scrutinized, be thoroughly reviewed by the Senate, and that this committee and the Congress follow very closely the activities of this person. Obviously, the person should be of the highest personal integrity but, equally important, should be committed to the mandate of the act and to following forward with what the Congress has mandated.

We believe that if there is going to be a sunset date based on reauthorization, then it should be 10 rather than 5 years. We have supported comprehensive sunset legislation that would require the review and automatic termination of agencies and programs if they have not been reauthorized and deemed to be effective.

But it seems that sunset is often picked out in an ad hoc way rather than in a comprehensive way, and we think that if sunset is going to be applied, 10 years would be better.

So, in conclusion, we clearly think OGE should be reauthorized and that it has done a wonderful job.

I would like to comment on a couple of things that have been talked about here this morning in other parts of the act just briefly.

The question of public financial disclosure. In our view, at the heart of the Ethics in Government Act is public financial disclosure. We think that it has operated well, despite cries of all the terrible things that would happen under public disclosure, kidnapings, all of your neighbors lining up to see your disclosures, et cetera.

All the things that were going to happen we think simply have not materialized and that in fact nearly 12,000 disclosures are filed in the Federal Government yearly with little commotion. It seems to have really become an accepted part of public service.

Now I want to point out that during consideration of the Ethics Act, which came before this subcommittee and the full committee, we worked very hard to balance the privacy rights of the public officials against the public's right to know. Mr. Kindness addressed this question this morning.

For example, Common Cause has always opposed disclosure of tax returns. We also were among those that proposed disclosing in categories of value rather than specific dollar amounts, and I do have to say that after the disclosures every year we get frantic calls from press people who say "we want Common Cause to condemn this disclosure system because you can't tell net worth from these statements."

We say the point is not to determine net worth. The point is to determine conflict of interest. But while we strongly fought for a balance in the act, we will fight just as hard to prevent too little disclosure, and we think many of the proposals that are afoot would prevent too little disclosure.

The question of requiring confidential disclosure in our view is really not disclosure at all. Specifically, we disagree with the Office of Government Ethics that we should eliminate disclosure for civil servants.

We know from anyone who has watched Government that the top level bureaucrats, the super grades, often exercise as much authority as some political appointee, and because they are outside of the public spotlight of the confirmation process in the political arena, it is really important that they publicly disclose because they are under less scrutiny by the Congress, by the President.

We know that the GAO study that was recently released pointed out from the people that they had surveyed that the fact that you disclose publicly causes you to take what you file much more seriously.

We have in my written statement, which I hope will be included in the record——

Mr. HALL. It will be so admitted.

Ms. MCBRIDE [continuing]. Discussion of the postemployment restriction. We discussed some concerns about administration although we do not think the number of people that are covered should be cut back on. We have raised some specific things about blind trusts.

Again, we think that any changes in these areas should not be pulling back from the coverage, but that there are some ultimate areas for simplification and streamlining.

In conclusion, we think that the Ethics Act has worked well. We think the Office of Government Ethics should be reauthorized, and while some fine-tuning of various parts of the act may be in order no case has been made for weakening the act in our view.

We obviously stand ready to work with this committee as you proceed in any way that we can.

Mr. HALL. Thank you very much.

[The complete statement follows:]

Summary of Testimony of Ann McBride,
Vice President for Program Operations
of Common Cause

Common Cause believes that the Ethics in Government Act has worked well and has fulfilled its primary purpose of reducing conflict of interest.

Office of Government Ethics

Common Cause believes that the Office of Government Ethics (OGE) has performed well in fulfilling its mandate and should be reauthorized. The OGE deserves public and Congressional endorsement and we will work vigorously to secure both.

o We believe that the statute should protect against potential political interference by giving the position of OGE Director a fixed term rather than the present relationship of service at the pleasure of the President.

o If the "Sunset" concept is to be used with the Office of Government Ethics, we believe that the duration of the authorization should be ten, rather than five, years.

o The nomination for Director of the Office of Government Ethics becomes a key test for the Reagan Administration.

Other Provisions

o The public financial disclosure provisions have proven to be reasonable, balanced and to have worked well. Common Cause opposes proposals that would weaken public financial disclosure.

o There are clearly legitimate administrative problems associated with the current method of designating coverage of the one-year ban on a position-by-position basis. The administrative problems should not become a justification for cutting back on those covered by the revolving door provisions.

o In any attempt to examine the blind trust provision for changes, it is important to separate the valid concerns about the present mechanism from overstated or misguided complaints. Any changes should be made within careful guidelines and consistent with the spirit of the provision enacted.

Conclusion

In conclusion, we believe that the Office of Government Ethics should be reauthorized, that the Act has worked well and that, while some fine-tuning may be in order, no case has been made for weakening it. We stand ready to work with this committee in any way that we can.

ANN McBRIDE
VICE PRESIDENT
FOR PROGRAM OPERATIONS
COMMON CAUSE

ON

THE REAUTHORIZATION OF THE OFFICE OF GOVERNMENT ETHICS

SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS

HOUSE COMMITTEE ON THE JUDICIARY

March 16, 1983

Mr. Chairman, Members of the Subcommittee, I am Ann McBride, Vice President for Program Operations of Common Cause. I appreciate the opportunity to testify here today in support of the reauthorization of the Office of Government Ethics (OGE).

Your timely start on the reauthorization of OGE should enable the Congress and the President to complete action on this important matter prior to the termination of the present authorization on September 30. We appreciate your constructive attention to this issue and we look forward to working with you.

Common Cause believes that in the five years since its passage, the Ethics in Government Act has worked well. Recent activities at the Environmental Protection Agency make clear once again why this and other laws which protect against conflict of interest continue to be necessary.

We believe that the Ethics in Government Act has fulfilled its primary purpose of reducing conflicts of interest. The major provisions of the Act -- public financial disclosure, revolving door provisions and the Office of Government Ethics, as well as the Special Prosecutor provision -- established new rules and procedures that have enhanced the integrity of the institutions of government. In addition, the Ethics Act of 1978 has caused government and public officials to treat seriously -- perhaps for the first time -- conflict of interest statutes, orders and regulations that have been on the books for years. Requirements for public financial disclosure and the creation of the Office of Government Ethics have combined to help conflict of interest laws

-- often in the past simply ignored -- to be dealt with forthrightly.

Mr. Chairman, we also believe that the Ethics in Government Act has enhanced public service. Without clear ethics laws and protection against conflict of interest, the lowest common denominator is allowed to set the standard for the institution. It cannot be too heavily stressed that the Act was not passed simply for the convenience of top government officials but rather to protect the American people against potential and real conflicts by government officials, against officials using public office for private gain.

Common Cause believes that the Ethics in Government Act continues to serve the public interest well. While some fine-tuning may be in order, it is clear that the Office of Government Ethics should be reauthorized and that no meaningful case has been made for weakening the Act.

Office of Government Ethics

Since its establishment in 1978, the Office of Government Ethics has served as the administrator of the executive branch ethics program. While much enforcement remains decentralized on an agency-by-agency basis, the establishment of an office with overall responsibility for ethics enforcement is a crucial step in ensuring government integrity. Common Cause believes that the Office of Government Ethics has performed well in fulfilling its mandate and should be reauthorized. The OGE deserves public and Congressional endorsement and we will work vigorously to secure both.

One area where the OGE has made a vital contribution is in the confirmation process. In the final years of the Carter administration, during the Reagan transition and in subsequent confirmations, the OGE has reviewed the financial disclosure statements of Presidential nominees and, after working out the necessary adjustments and agreements, certified to the Senate that nominees are in compliance with ethics laws and regulations.

This procedure has become such a central part of the confirmation process that, according to former OGE Director Jack Walter, ". . . each committee of the Senate now refrains from reporting presidential nominees for confirmation prior to receipt of assurance from the Office of Government Ethics that the nominees will be able to assume office legally uncompromised by their personal financial interests."

We believe that public confidence in this and other OGE activities is closely related to the independence the office has in making findings free from political interference. We therefore believe that the statute should protect against potential political interference by giving the position of OGE Director a fixed term rather than the present relationship of service at the pleasure of the President.

As you know, Mr. Chairman, the position of OGE Director is now vacant. We believe that the effectiveness of the Office has been in no small measure due to the commitment of the previous Directors and the now Acting Director to the mandate of the OGE, to Ethics laws and regulations and to the fundamental goal of a government where public office is not used for private gain.

This nomination becomes a key test for the Reagan administration, which has had far from a stellar record on matters of conflict of interest. In the past two years, significant questions have been raised about a number of officials, including the Attorney General, the Director of the CIA and, most recently, appointees at the Environmental Protection Agency. In addition, top level officials at the White House, including former Personnel Director Pendleton James and Counsel Fred Fielding, have been highly critical of the Ethics in Government Act and have advanced proposals that would gut the law. In this context, it is particularly incumbent on President Reagan to nominate a person of unquestioned integrity who is fully committed to the mission of the Office of Government Ethics and who will actively and vigorously implement existing Ethics laws and regulations.

In addition, Mr. Chairman, we are concerned about the short length of time -- five years -- of the proposed reauthorization. Common Cause has supported Sunset legislation in which all agencies, programs and tax expenditures would be reviewed and subject to automatic termination every ten years unless affirmatively reauthorized. As you know, comprehensive Sunset legislation has not passed the Congress and the "Sunset" concept has been used instead to single out certain agencies or programs, often those which are controversial, unpopular, or without an outside constituency. If the Sunset concept is to be used with the Office of Government Ethics, we believe that the duration of the reauthorization should be ten, rather than five, years.

Finally, we support the recommendation of the Office of Government Ethics that the Act be amended to clarify OGE's exclusive jurisdiction in implementing regulations concerning standards of conduct in the executive branch.

Public Financial Disclosure

At the heart of the Ethics Act is the requirement for public financial disclosure. After several years of experience under the Act, we firmly conclude that the disclosure provisions have proved to be reasonable, balanced and to have worked well.

On the average 12,000 disclosure forms are filed yearly with little commotion. It appears that, for the most part, disclosure requirements have become an accepted part of public service.

Certainly there is no credible evidence that financial disclosure requirements have in any significant way discouraged otherwise willing individuals from entering government service or caused quality personnel to leave federal service. The results of a study by the Office of Personnel Management showed that of 162 respondents, only 8% cited public financial disclosure among the top five reasons for leaving government.

During legislative consideration of the Ethics Act, Common Cause worked vigorously to balance the privacy rights of the public official against the disclosure necessary to guard against conflict of interest. For example, we strongly opposed efforts to require disclosure of income tax returns and have consistently opposed disclosure of net worth. In fact, Common Cause was among those which proposed disclosing in categories of values instead of specific dollar amounts.

But while we strongly fought against requiring too much disclosure, we will fight just as hard to prevent too little disclosure. We believe that the changes in the disclosure provisions advocated by some Reagan Administration appointees would severely undermine the Act to the detriment of the public trust.

"Confidential" Disclosure

Common Cause is strongly opposed to any attempts to weaken the Act by requiring only confidential financial disclosure. By reason and definition, "confidential" disclosure is not disclosure at all. The ability for the public and press to have direct access to the disclosed information has prompted much more serious attention to the Act's requirements by those concerned. Public disclosure is an action-forcing mechanism for designated agency officials and others to actively apply the law. General Accounting Office studies before the passage of the Ethics in Government Act found widespread non-compliance with existing conflict of interest regulations under the system of confidential disclosure then in effect. A recent GAO report states that the mere fact that disclosure documents are public information encourages individuals to be more accurate in completing the reports.

It should be remembered that it was the public disclosure of Attorney General William French Smith's $50,000 severance arrangement from a firm in California that raised the serious question of the impropriety of such an arrangement. In short, public disclosure forces the law to be taken seriously.

Eliminating Public Disclosure for Civil Servants GS 16 and Above

For many of these same reasons, Common Cause would also strongly oppose any efforts to eliminate public financial disclosure by career civil servants covered by the Act. Top-level civil servants -- GS 16 and above, the so-called "Supergrades" -- often exercise as much decision-making responsibility as some political appointees. And because the public spotlight is much less focused on career employees, public disclosure to protect against conflicts of interest is clearly needed.

We believe the public interest is best protected by establishing, as the Act currently does, a broad objective standard for those who should logically disclose. The number of those required to file under this system is relatively small. Approximately 12,000 employees (including both civil service employees and political appointees) of 2.1 million civilian government employees are required to disclose under the Act -- less than one-half of one percent.

Obviously under an objective standard some individuals will be required to file who perhaps under another standard should not, while others who should be required to disclose could possibly escape coverage. But we believe that benefits of establishing an objective system are clearly borne out by the difficulty OGE has faced with establishing a position-by-position designation for coverage under the revolving door provision.

To eliminate public disclosure by civil servants would be to ignore the reality that top-level civil servants exercise important authority in government and thus have a high potential for

conflicts of interest. It would also mean that the function public disclosure serves as a unifying enforcement mechanism would be abandoned.

Limiting Information to be Disclosed. Common Cause strongly opposes proposals that would significantly weaken financial disclosure by requiring disclosure only of the identity of the financial interest without having to specify value. The legislative history of the Ethics Act underscores the need for a sufficient number of categories of value to reflect the magnitude of a holding and thus the potential magnitude of a conflict of interest. Categories of value, such as those contained in the existing law, are necessary for the public, the press and the Office of Government Ethics to discern the significance of the holdings or transactions being disclosed. Attorney General Smith's severance fee from a California corporation takes on special significance when one knows that the amount is $50,000 -- more than he made during the entire six years he served on the board of directors.

Improving Enforcement Through Random Audits. Common Cause supports strengthening enforcement through the addition of random audits of financial disclosure statements, similar to those used by the IRS for tax returns. The prospect of a random audit would be a strong additional incentive to disclose promptly, accurately and completely, and would give OGE an additional tool with which to oversee the Ethics program and to check compliance. We also support a system of random audits for congressional and judicial branch disclosures.

Post-Employment Restrictions

No proposal caused as much controversy during congressional consideration of the Ethics Act as the revolving door provision establishing a one-year ban on top-level officials contacting their former agencies. This one-year cooling-off period was a wholly new provision added to existing revolving door restrictions which were also strengthened by the Ethics Act.

Despite gloomy warnings that the revolving door provisions would drive people out of government service, there has been no evidence that significant numbers of individuals have declined to enter government service, or have left government service, because of the Ethics Act restrictions.

There are clearly legitimate and nettlesome administrative problems associated with the current method of designating coverage of the one-year ban on a position-by-position basis. The administrative problems, however, should not become a justification for cutting back on those covered by the revolving door provisions. We would be pleased to work with OGE and with Members of Congress to help devise an objective system that protects the one-year ban while simplifying its administration.

Common Cause supported the one-year ban as a reasonable compromise in lieu of more stringent proposals to limit a former official's employment after leaving government. During congressional consideration, the original scope of those covered by the provision was significantly narrowed. We believe that further narrowing of the coverage would be an unacceptable weakening of the provision and should be strongly opposed.

Blind Trusts

Common Cause believes that the provisions in the Ethics Act for the use of blind trusts by government officials was a creative and necessary step in offering alternatives for dealing with conflicts of interest. Blind trusts which had been used over the years in an ad hoc way very often had 20/20 vision and did little more than give the illusion of separating the public official from potential conflict of interest. That is why clear rules in this area are extremely important.

Common Cause believes that experience in the complicated area of blind trusts suggests that some fine-tuning may well be undertaken. Proposals to change the provisions, however, should be tempered by the realization that other acceptable mechanisms exist for addressing potential conflicts between financial interests and official duties, including disqualification and divestiture. In any attempt to examine the trust provision for changes, it is important to separate the valid concerns about the present mechanism from overstated or misguided complaints. Any changes should be made within careful guidelines and consistent with the spirit of the provision enacted.

One area where there seems to be concerns that should be examined is the area of so-called "old family trusts." Another is whether the requirements for a trustee are adequate to guarantee true independence.

A closely related issue is the question of the adverse tax consequences of the disposal of assets necessary to comply with conflict of interest laws upon entering government service.

Attention should be given to whether it is possible and workable to minimize such a financial penalty for entering public service. Care must be taken, however, to assure that government service does not become a temporary "safe harbor" to be used to avoid normal capital gains or other taxes that would be due upon sale of assets built up over a number of years while in private employment.

No support should be given to the notion that officials should be allowed to take a more active role in the management of the assets held in trust. The argument has been raised that this is necessary for the official to maximize the source of private funds that he may draw upon to supplement a public salary that may be significantly lower than former pay levels in private industry. Although a large disparity between public and private salaries may be inevitable for some individuals, it is not the purpose of the Ethics Act to address that problem. The direct way to address that problem is to adjust public salaries, as Common Cause has consistently advocated, not to open the door to sharply increased potential for conflicts of interest.

Conclusion

Shrill cries at the time of passage of the Ethics in Government Act predicted grave consequences: kidnappings, relatives and friends lining up outside government offices to examine disclosures, difficulty of those leaving high level posts in finding employment, inability to recruit for government service, and a vastly reduced pool of government employees. These fears have not materialized.

In fact, despite the allegations of many in the Reagan administration that the Ethics Act has hurt recruitment, White House Counsel Fred Fielding admitted at a 1981 OGE conference, ". . . To be fully honest about the whole thing, we do not know how many people used the Act in their conversations with us as an excuse because, although they were flattered to be asked, they did not want to accept for another reason, probably financial."

Even those who are most vocal in criticizing the Act's requirements often conclude that government service is well worth pursuing. I was struck by an article which appeared in Dun's Business Month, which for several pages quoted officials criticizing the blind trust provisions of the Ethics Act. Yet, the final paragraph began, "Moreover, most office holders claim that the advantages and pleasures of serving outweigh the sacrifices." The article concluded with quotes from some of the same people who were earlier criticizing the Act. One former official said, "In spite of the hassles, there's not a moment I have regretted." Attorney General William French Smith -- who certainly has felt the full impact of the Ethics Act -- was quoted in The Washington Post saying: "Sure, it's worth it. Good grief, this is an important public service. It's the kind of thing one both wants to and should do from time to time. It's been an interesting adjustment -- for a lot of reasons. But it has a fascination that doesn't exist in private life."

Government service is and should be rewarding. It is for this reason that Common Cause has consistently supported -- and continues to support -- appropriate increases in pay for

government officials. The failure of Congress over the years to deal responsibly with the pay question has had a profoundly detrimental effect on government. And while only a small percentage of people cite the Ethics Act as a major reason for leaving government, the pay question is clearly driving people out of public service. The results of an Office of Personnel Management survey showed that out of 162 respondents, more than fifty percent cited the cap on salaries as among the top five reasons for leaving government. This is compared to eight percent who cited public financial disclosure and twelve percent who cited revolving door provisions among their top five reasons for leaving government.

In conclusion, we believe that the Office of Government Ethics should be reauthorized, that the Act has worked well and that, while some fine-tuning may be in order, no case has been made for weakening it. We stand ready to work with this Committee in any way we can.

Mr. HALL. You state that your opinion is that the Director should have a set term of office rather than a service at the pleasure of the President.

What term of years do you think that that person should have? Just give me your information; give me your feeling in that regard.

Ms. MCBRIDE. Obviously, any set amount of time would be arbitrary. We have discussed the possibility of 5 years. We don't think it should be as long as the head of the GAO, which is some 10 years, but again that is arbitrary, and we would be pleased to talk to this committee about a specific length of time if that was under consideration.

We think that obviously the Director should be able to be removed for cause, but the current situation presents the possibility—although, according to Mr. Scott, this has not happened to date—presents the possibility that the head of OGE in fulfilling his or her mandate goes after someone in the White House and the President, under the current situation, can remove the Director for no reason at all.

And I think that in reality that situation could present itself, and I think the public perception of independence of OGE is very important to the integrity of it.

Mr. HALL. Do you believe that the Office should be made a separate agency, with complete independence from OPM? Can you see any advantages to that or disadvantages?

Ms. MCBRIDE. Mr. Chairman, I think that the important kinds of modifications that Mr. Scott has discussed such as a separate line item in the budget, that kind of thing would take care of the independence question from OPM.

From what we have found in talking to people, OPM has not invaded into OGE's regulatory authority. They have not tried to tell them what to do, but that some of the simple modifications, separate from creating an entire separate entity, a separate line item, being able to issue regulations in OGE's name, could handle the problems of independence without a separate agency.

Either way I think would be fine.

Mr. HALL. Thank you.

Mr. KINDNESS. Thank you, Mr. Chairman. Thank you, Ms. McBride.

On page 9 of your statement, you indicate there that there is no evidence that significant numbers of individuals have declined to enter Government service or have left it because of the Ethics in Government Act, and referred to one survey of OPM, indicating about 8 percent of those leaving Government service indicated that that was a factor.

Are you aware of any surveys that have been done with respect to those who have not entered Government service and whether this might be a factor?

I would think there would not be such a survey.

Ms. MCBRIDE. There is no data. What we do have is the GAO study, which was referred to by the earlier witness, in which through interviews they concluded that it had not hurt recruitment.

I think an interesting thing we have found—for instance, counsel Fred Fielding and former Personnel Director Pendleton James in

the White House stating this, again and again, it has hurt recruitment, it has hurt recruitment—and yet when Mr. Fielding was speaking recently at the Ethics Conference—and if you would give me a minute I would like to read this because I think it is important.

He said—and again this is Mr. Fielding:

> To be fully honest about the whole thing, we do not know how many people use the act in their conversations with us as an excuse, because, although they were flattered to be asked they did not want to accept for another reason, probably financial.

I think we would say one of the major inhibiting factors in getting people into Government service—and these polls bear that out as far as why people leave Government—is low salaries, and that is why we have fought and will continue to fight for increased salaries for all three branches of Government.

But there is no data there showing the Ethics Act has hurt recruitment, and what surveys show is that it has not been a significant factor in people leaving Government.

Mr. KINDNESS. I am reminded of a recent set of hearings that another subcommittee of another committee had with respect to a task force on the interdiction of drug traffic in a part of the country. Estimates kept cropping up about the percentage of drug traffic that was being caught, somewhere around 10 percent, and you have to ask 10 percent of what? [Laughter.]

How do you know? There really isn't a very good way to get at that information, I suppose.

Thank you, Mr. Chairman. I yield back.

Mr. HALL. Mr. Frank.

Mr. FRANK. No questions, Mr. Chairman.

Mr. HALL. Thank you very much.

That concludes the testimony that we have of the three witnesses. We appreciate very much you all being here and appreciate the very fine statements that you have given. So, thank you.

[Whereupon, the subcommittee was adjourned.]

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